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# THE GREAT RAILROAD CONSPIRACY



Charles Hirschfeld

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# The Great Railroad Conspiracy

THE SOCIAL HISTORY  
OF A RAILROAD WAR



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The Michigan State College Press

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## PREFACE

THIS is a tale of war, a railroad war, such as flared up in the United States in many places during the nineteenth century, when railroads were new and fearsome things. The field of battle was the young state of Michigan about one hundred years ago, and the combatants were farmers and the biggest railroad in the state. Violence, arson, intrigue, money, and public opinion were the weapons; life, liberty, and property were the goals that drove men on in this dramatic conflict that stirred the state from lake to lake.

The great railroad conspiracy, as this war came to be known locally, has never been truly celebrated in story. The extant accounts are partial in every sense of the word and, with few exceptions, give only the official version. The story is worth retelling, if only the more firmly to establish the facts and present a more reasonable approximation of the truth.

The purpose of this book, however, goes beyond historical accuracy and dramatic interest. If only these had been the aims, they could have been realized in much fewer words. The story has been told, rather, in a large way in order to give a picture of an important phase of American life, of a young and rapidly growing community of the West of the 1850's, but one remove from the frontier. The bare outlines have been filled in, the thread of the conflict has been followed into its social, political, and economic ramifications. The narrative of events has been used as a vehicle for presenting something of the social history of a community which was certainly not unique in the development of this country.

The result, it is hoped, is a broad and vivid account of what Americans were like in the long process of becoming what they are. On one level, this is a study of the behavior and feelings of Americans, at home, in business, at the crossroads tavern, in court, and in politics. It is a case history of democracy, illustrating the strains of our political development at the grass roots. Its themes are American frontier individualism exploding into violence and

agrarian enterprise clashing with an expanding business dynamic. The flavor of the era is sustained by using as far as possible the spoken language of the time and place, from the salty vernacular to polished prose. Here, in short, is a snapshot of mid-nineteenth century America when it was not posing for a textbook illustration against a backdrop of quaint propriety.

More particularly, the book spells out in one state the conflict of the farmers and the railroads years before the Granger agitation roiled the Midwest scene. It is a good example of a pre-Civil War antirailroad movement, a phenomenon often neglected by American historians. These early struggles may have been only the inchoate stirrings of agrarian sentiment against the new public carriers, but they formed the tradition out of which the agitation of the 'seventies grew. Also involved were all the complications of intrastate and sectional rivalries, with Michigan businessmen and eastern capitalists lining up on both sides of the local conflict.

As a study in railroad and business history, the book also deals with the problems of construction and operation in the salad days of railroading. It throws light on the career of John W. Brooks, an outstanding American railroad builder and entrepreneur who was foremost in the making of the Michigan Central Railroad and other lines further west.

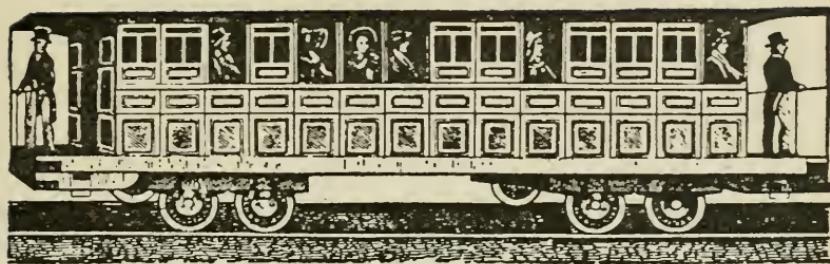
Seen thus in proper focus, the great railroad conspiracy emerges as more than a ruckus at Michigan Centre in Jackson County, Michigan. Its story rises above the level of melodramatic insignificance and becomes, I believe, an addition to our understanding of the American past.

Specific acknowledgements of help in the preparation of this work are listed in the first footnote, which, like all the others, may be found at the end of the text.\* Here, I wish to take the opportunity of thanking Dr. Lewis Beeson, editor of *Michigan History*, for permission to use material which first appeared in that periodical; and lastly, Amanda, for whom, after all, this book was written.

CHARLES HIRSCHFELD

*East Lansing, Michigan*  
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# *PART*



# *ONE*



THE STORY of the great railroad conspiracy goes back to 1846 when the state of Michigan sold its railroads to private chartered corporations. The state had built and operated two railroads since 1837 as part of a broad program of internal improvements designed at once to build up the interior of Michigan and advance the commercial interests of its cities, particularly Detroit. By 1845 the railroads had not reached Lake Michigan from their eastern terminals as required by law, and further public construction and operation seemed to run into an impasse of financial difficulties and not altogether disinterested prejudice. The Central Railroad, which had reached Kalamazoo from Detroit, was the farther advanced in construction and the more profitable of the two roads. It was this road that attracted the attention of John W. Brooks, a civil engineer who had helped build and operate railroads in New York and New England, and James F. Joy, a transplanted Yankee who had won a position for himself at the Detroit bar. These two young men, ambitious and shrewd, saw the immense moneymaking possibilities in a completed transpeninsular railroad that would tap the expanding western hinterland and link it with the eastern seaboard. Brooks used his eastern connections to interest a group of New York and Boston capitalists, and Joy worked on the Michigan legislature; and in 1846, the Michigan Central Railroad Company received a charter and possession of the railroad from Detroit to Kalamazoo for the sum of two million dollars. At the same time, the other railroad, running through the southern counties from Monroe to Hillsdale, was knocked down to the newly chartered Michigan Southern Railroad Company.<sup>1</sup>

Taking over the Central road in the fall of 1846, Brooks, as superintendent of the new company, and Joy, as legal counsel, started immediately to improve their investment and realize their golden vision. Money and men were poured into a concerted drive to reach the lake at New Buffalo. Tracks were laid with sixty-pound T-rails and the latest model engines and rolling stock put into operation.

The old line of the road east of Kalamazoo was improved with new grades and bridges and the old worn strap rails were replaced with the heavier T-trails. By April, 1849, the Michigan Central spanned the peninsula, was paying eight and nine percent dividends on net earnings of almost \$200,000 a year, and the trains were running at thirty miles an hour.<sup>2</sup>

The drive for efficiency and profits soon brought the company into conflict with the farmers along the line of the road. The right of way was largely unfenced, and the cattle of the farmers through whose land the tracks ran were easy marks for the heavier and speedier trains. What incensed the farmers was not only the killing of great numbers of cows, sheep, and hogs, but the fact that the company refused to pay what they considered fair damages. Much livestock had, indeed, been destroyed when the railroad had been owned by the state, but the Board of Internal Improvements, the state's operating agency, had not dared to antagonize the electors by paying less than their claims. One official of the board had complained in 1845 that the damages paid for cattle maimed and killed had reached extravagant proportions and suggested that in cases where no negligence on the part of the engineers could be proven, the farmers should be made to bear half the loss.<sup>3</sup> This impolitic suggestion had, of course, never been adopted. Superintendent Brooks, however, with no concern for the electorate and responsible only to the directors and stockholders, was determined to pay as little as he could and make the farmers share the risks. He claimed that the cattle were trespassers; that the negligence and cupidity of the owners were contributory factors; and hinted strongly that the farmers were seeking a ready market at each crossing. Brooks denied any legal liability for damages at all, but offered, as a measure of expedience, to pay half of the appraised value. The aggrieved farmers took this offer as an admission of liability and demanded full damages.

When these were not forthcoming, the issue was fully joined. Excitement flared up all along the line of the road from Ann Arbor to Niles in the spring of 1849. Near Niles, where the state had never operated the railroad and where it was reported that one hundred sixty pieces of livestock had been killed in the twelve-mile stretch between Niles and Dowagiac, the farmers retaliated for the half-pay offer by committing serious depredations, going so far as

to derail an engine by opening a switch. One infuriated citizen threatened publicly to tie up traffic entirely. West of Kalamazoo, the farmers, under cover of darkness, greased the tracks on the upgrades with lard and tallow salvaged by their wives from the carcasses, to the great annoyance of the train crews who had to get out and sand the tracks before they could proceed. Further east, near Ann Arbor, the tracks were actually torn up, presumably by those who had had cattle killed.<sup>4</sup>

At Marshall, few evening trains passed without being delayed by turned switches or shot at. The violent outbursts there were broadcast and justified by one of the village's leading citizens, John D. Pierce, in a series of letters to the local Democratic newspaper. Pierce, Michigan's first state superintendent of public instruction, a member of the legislatures of 1847 and 1848, and a clergyman by training, had recently had some sheep of his own killed on the tracks and now took up the cudgels for the farmers in the area. He denounced the destruction of livestock and the company's disclaimer of liability and refusal of fair damages. "The road," he declared in June, 1849, "has been for a long time one gore of blood. No heathen altar ever smoked more continually with the blood of its victims." And the company dared to charge that the owners of cattle were the trespassers. Resort to legal action cost more than the cattle were worth. The railroad's "reckless policy" had created "an embittered state of feeling along the whole line" and was responsible for the fact that the injured persons resorted to violence "because they know no other way." Pierce warned the company of the consequences of its policy, even though he had "little hope that any reason or argument which was not addressed to its cupidity would induce a moneyed corporation to change its course." According to one account, the choleric preacher proved his point. When he championed the cause of a poor widow who had a yoke of oxen killed, and Superintendent Brooks contemptuously sent word back to Marshall to "Tell that parson out there he'd better stick to preaching." Pierce replied that if the company did not pay the woman, he himself would see to it that every mile of track in Calhoun County was torn up. The parson's triumph was complete and biblical, if momentary, when Brooks paid up in that one case. Pierce concluded as follows:

Something must be done, the honor of the state,—its good name . . .

demand it. The road must be fenced—in the meantime something near the value of the property destroyed must be paid. It is an outrage, and evidences utter recklessness of life and limb of both man and beast that the company should run trains over an unfenced road, where all cattle are by law free commoners, at the rate of thirty miles per hour.<sup>6</sup>

Neither at Niles nor Marshall nor anywhere else in the state was the opposition to the Michigan Central Railroad so intensive and so sustained as in the few miles along the line of the road between Grass Lake and Michigan Centre in the eastern part of Jackson County. It was here that collective protest first brought the offer of half pay from Superintendent Brooks, and here that destructive reprisals continued for almost two years to disrupt the railroad's operations. Precisely why it was so seems difficult to ascertain at this distance in time. Perhaps more cattle were killed in Leoni and Grass Lake townships than elsewhere, although the evidence is not conclusive on this point. Perhaps it was that here the farmers found leaders, veritable tribunes of the people, in two men with a stubborn determination to see that justice was done, Abel F. Fitch of Michigan Centre and Benjamin F. Burnett of Grass Lake. Perhaps it was the deliberate choice by Superintendent Brooks of these two townships as the arena in which to break the back of the opposition to the railroad that brought the most violent reaction in the state.<sup>6</sup>

The losses between Grass Lake and Michigan Centre, while substantial, do not seem to have been unusually heavy. One estimate was that forty head of cattle had been killed near the village of Leoni. According to a later estimate, damages to the amount of \$800 had been inflicted on the farmers of the vicinity.<sup>7</sup> The editor of a Jackson paper offered the following explanation of the imbroglio some fifty years after the events: East of Michigan Centre, the railroad track crossed a muskeg or sunken lake, "The Dry Marsh" as it was known in the locality, and the cattle in the area, which had previously skirted the marsh, began to use the tracks as a convenient bridge, with disastrous results to themselves. The railroad, moreover, then brought its own appraisers out from Detroit, and the amount of the damages fixed by a company appraiser who saw the animals after they had been dead for several days was not such as to satisfy the owners.<sup>8</sup>

In any case, by the spring of 1849, the increasing destruction of

livestock and the company's refusal to pay the damages claimed aroused the farmers in the vicinity to action. At a number of public meetings—railroad meetings, they were called—they collectively requested Superintendent Brooks to modify his policy, to direct the engineers to run their trains more carefully, and, until the right of way was fenced, to pay full damages. At one of the meetings, Abel F. Fitch, Benjamin F. Burnett, and one James Courier were chosen as a committee to represent the group's views to the railroad's superintendent in Detroit. The three accordingly wrote Brooks a letter informing him of the great excitement among the farmers of the region and suggesting the consequences of further inflammation of the popular mind by a policy that was not "more humane." Brooks, in reply, completely denied the validity of the committee's representations. The company, he countered, was not legally liable at all for damages to property along the right of way; he would, however, pay one half of the appraised value of all cattle killed. Meanwhile, he suggested, the company and one of the injured parties could take a test case to the Supreme Court of the state to decide the question of liability, with all costs and fees up to \$50 to be borne by the company. If the court decided that the company were liable, he would thereafter pay in full the damages incurred by the farmers. Brooks, at the same time, professed to see an implied threat in the committee's letter and went on to add that he would hold Fitch, Burnett, and Courier morally if not criminally responsible for any injury done the railroad in any attempts to coerce it.<sup>9</sup>

Brooks' proposal, which was published in the Jackson newspapers, was never seriously entertained. Abel F. Fitch dismissed it on the steps of the American Hotel in Jackson as a "perfect humbug." The farmers followed his lead and ignored it and then struck back in the readiest way at hand—by placing obstructions on the tracks, stoning the trains, and even shooting at the engines as they passed in the night. As Fitch, now become their spokesman, argued, the people had had their cattle killed and could not get redress any other way. When someone suggested going to court, Fitch denied that the people could get their rights that way, and went on to attack the whole judicial system in a cynical diatribe of a man who knew the political game. He stated bluntly that every man had his price and that a judge could be bought as well as any other man;

that he had no more confidence in the judges of the Supreme Court than in those of the lower courts—they knew enough law but could be bought as well as others, though in ordinary cases they were well enough; and that he based his opinions on a certain county judge whom he named. He denounced the railroad company as an aristocracy whose influence and money would prevent justice from being obtained in any court. When it was argued that endangering the lives of innocent passengers was not the way to attain the object in view, Fitch heatedly countered that persons who would support such a company ought to be injured.

Fitch's stand was echoed by William Corwin, a teamster at Michigan Centre, who was a young and irresponsible fellow. One morning at the end of May, Corwin was approached by a neighbor, Abram Henry, who mentioned that he had heard some shots fired as the train passed the night before. He asked Corwin if they were firing at the train last night. Corwin casually replied, "Yes, I suppose so." Henry asked if anyone was killed. Corwin said, "No." When Henry then pointed out that by and by they would kill somebody, Corwin burst out: "Damn 'em, if they don't want to be shot let 'em pay for the cattle they have killed." Henry told him that it was a bad idea, for they would kill innocent people who paid their money for riding over the road. Corwin closed the conversation angrily: "Damn 'em, they need not ride over the road if they don't want to be killed."

Not long after, the violent agitation brought the attorney general of Michigan, George V. N. Lothrop, to the scene. He came to Jackson from Detroit to investigate the trouble and try to allay the unrest. On his arrival, he was met by the committee of three who presented the aggrieved farmers' case substantially as they had done to Brooks. When Lothrop suggested a remedy at law, they replied that a poor man would have no chance in a law suit with the company. Fitch and Burnett argued with some warmth that the railroad was to blame for the excitement and lawlessness; that as long as it would not pay fair value for cattle killed, it might expect trouble on the road; and that the people were justified in taking matters into their own hands, for it was the only means they had of bringing the company to terms. Fitch even threatened to send handbills to New York, Buffalo, and Chicago, warning the public that it was dangerous to pass over the Michigan Central. Lothrop

returned to Detroit and presented the committee's views to Superintendent Brooks. He then wrote the committee that Brooks insisted that his proposal was a just and liberal one and an earnest of the company's solicitude. Brooks gave them every assurance that any engineer found wantonly destroying cattle would be discharged. Furthermore, it had always been the practice of the company to pay full value for cattle killed when the owner was too poor to bear the loss. For himself, Lothrop condemned the outrages and promised that the offenders, who were no better than "pirates and wholesale murderers," would be severely punished. He then warned the three spokesmen that unless they themselves exerted an active influence to prevent such conduct, they "must expect to be held, in no slight degree, responsible . . ." And like a good politician, Lothrop closed on the note of the necessity of compromise.

Matters remained, however, at an impasse. The verbal exchanges proved to be only preludes to a violent and embittered battle. As the summer of 1849 advanced and as mutual suspicion and hatred mounted, more cattle were killed and further depredations were committed against the railroad. When Orlando D. Williams, a mason at Leoni, had his cow killed, the company offered him half price for it three or four times. He refused the offers and demanded \$25 or nothing. He told his neighbor it would be a dear cow for them. Andrew J. (Jack) Freeland, a successful farmer at Michigan Centre, complained he had a number of sheep killed, five or seven, and the company offered him half price for them, but if they did not pay him full price they would be dear sheep. He slyly said that the cars were getting rather skittish about running through Leoni Township, and "damn 'em, they'd better pay up for cattle if they did not want trouble."

The railroad did not pay up and it got the trouble. That summer and fall passenger and freight trains were frequently stoned, shot at, obstructed, and derailed in the ten-mile stretch between Grass Lake and Jackson. The assailants would hide in the undergrowth along the right of way during the night and throw stones, bricks, and bottles and discharge pistols at the passing trains. Sometimes they would sally forth to lay rails and logs across the track or throw switches. Once the passenger train was stoned a little east of Leoni village and the conductor heard a woman scream and went back into the cars and a lady handed him a stone which had lodged in

her lap. A man in the next car was badly hurt by a stone which hit him in the breast. The conductor went on to find stones in every car and many windows broken. One night, an engineer later recalled, his passenger train was stoned three times, twice near Fitch's house, which stood beside the tracks at Michigan Centre, and once west of Leoni. On investigation, he found the mark of a brick five inches long on the tank and a big dent on his boiler. Another night that summer, the same engineer was shot at as he approached Michigan Centre. He saw a flash of guns, some four or five of them, from about thirty or forty feet from the tracks and later found the marks of a ball on one of the engine's feed pipes. This engineer had no taste for these extra hazards of railroading and soon left his job with the Michigan Central for one in another state. Another engineer later admitted that he sometimes cowered behind the driving wheel guards as he rode through the badlands at Michigan Centre.<sup>10</sup>

The attacks were varied by placing rails, old ties, and the discarded strap iron rails across the tracks or jamming them in between the joints of the rails and in the switches. The company had to run a hand car ahead of the trains between Grass Lake and Jackson, but the determined assailants would simply hide alongside the track and then, after the hand car had passed, run out and do their mischief. Traffic was greatly slowed up and the train schedules were knocked awry, for each obstruction meant stopping the train and getting out and clearing the tracks. The run from Grass Lake to Jackson, which normally took forty-five minutes, sometimes took as long as an hour and twenty-five minutes. The crawling pace through the disaffected areas was indeed a necessity if the trains were not to be run off with great loss of life and property.

Once that summer, the locomotive *Dexter* was drawing a rack train loaded with timber going west in the late afternoon. The conductor, Harmon Spaulding, was in the cab with the engineer and the fireman. The train slowed down after reaching Leoni but then speeded up in order to make way for the eastbound passenger train expected at that time. About a half mile east of Michigan Centre, as the engine rounded a curve running along the Dry Marsh, Spaulding sighted a stick of timber lying across the track. The engineer reversed the engine and then both he and the fireman

jumped for their lives. Spaulding stayed on as the wheels hit the log, cut it in two, and ground to a stop near the crossing at Michigan Centre. A group of men came up to the stalled engine, among whom Spaulding recognized Abel Fitch and Ammi Filley, proprietor of the tavern at the Centre. Fitch asked, "Spaulding, what's the trouble?" Spaulding pointedly told him that "some damned hyenas" had put a timber on the track and tried to run the train off. Someone in the crowd shouted they wished they had run it off. To this, Spaulding replied, "I don't see what you have against me, as I have not been running on the road for some time." Filley here chimed in with the remark that they did not care who they killed and would as lief kill him as any one else. Spaulding then asked Fitch what their object was and the latter replied that there had been cattle killed that had not been paid for. Fitch continued, shouting, "Spaulding, by God, the company can never run this road in safety until they come out and pay us our price for killing cattle and damages done to other property." Spaulding then argued that he couldn't see why the obstruction was put on at that time, unless it was intended to catch the passenger train, as they did not know this timber train was coming along. Somebody answered to the effect that the men who put it there knew their business. Spaulding, his temper rising, warned the men that if it had got to that pass that the company could not do business on the road, he for one was ready to come out and defend the road with arms if necessary. Fitch threw the threat right back and said they might come on if that was the game—he had two double-barreled guns and some loaded pistols ready for business and men enough to use them. At this point, Spaulding judiciously decided that matters had gone far enough for the moment; the temper of the crowd seemed to be ugly and a strategic withdrawal was in order. The train moved on only to find more obstructions ahead, several bars of strap rail and the skin of a dead cow, and it was Spaulding who went ahead on foot to remove them.

Yet another form of vicious bedevilment was to set fire to the piles of company lumber stacked along the right of way for the use of the locomotives. Late one night in the fall of 1849, three of the more law-abiding citizens of Leoni were returning from Jackson on foot along the tracks. They came upon two woodpiles burning about a mile west of Michigan Centre, and went to work to put

the fires out. As the train passed, they stopped it and asked for help, but got only an unceremonious damning from the jittery, distrustful train crew. As day broke, the little group, still hard at work putting out the fires, was accosted by three friends somewhat less concerned with the preservation of the property of the railroad. They were Fitch, Filley, and Erastus Champlin, a farmer at the Centre, who explained that they had been hailed by the train crew back at the Centre and told that the woodpiles were on fire. The newcomers were content to stand there, taunting and reviling the fire fighters. Champlin sneered that the train crew was perfectly right in damning them, they ought to be damned, and damn those who didn't damn them. Fitch, with wry humor, told them that they ought to be burnt up with the wood, then the company would pay their wives half price for the ashes. When one of the conscientious ones remonstrated that he thought it was his duty to try and save property when it was being destroyed, Fitch answered that he had never put anything on the track and would not take anything off if he saw the cars coming with Brooks and the whole company in them and "it knocked them all to hell." The fires presumably were put out, but certainly without the help of the vindictive Michigan Centreites. At another time, Fitch refused a request for help in putting out a blazing culvert, saying, "You will have to go out of this town to get help to put it out."

Not all the mishaps that afflicted the railroad in the summer and fall of 1849 could be attributed, directly or circumstantially, to the lawless citizens of Michigan Centre, Leoni, and Grass Lake. Some were simply accidents due to the rather primitive railroading operations. Several engines and trains were derailed after running into cattle grazing on the track, which must have seemed like divine retribution to Fitch and his friends. The negligence of track crews doubtless accounted for a number of accidents. Nor had attacks on the trains disappeared elsewhere along the line of the road. East and west of Niles and between Ypsilanti and Ann Arbor, occasional depredations continued to make travel on the Michigan Central a hazardous venture.<sup>11</sup>

Superintendent Brooks was soon convinced of the need for strong measures to eliminate the threat to the road's operations. Business during 1849 was none too good in any case, what with the poor crop, an outbreak of cholera in the state, and the continued

strong competition of the lake boats that took passengers to Chicago around Michigan via the lakes. The attacks by those whom Brooks could only recognize as marauding felons were driving passengers to travel around the lakes rather than risk life and limb on the Michigan Central.<sup>12</sup>

Brooks' first step was to station company police or watchmen along the track in the troubled area. He then offered a reward of \$500 for the detection and conviction of the criminals who had obstructed or would obstruct the railroad, and circulated printed handbills to that effect along the line. The reward circulars singled out for special consideration those "sundry evil minded persons, in and about the village of Leoni," but also extended its terms to "similar offenders on any part of the road."

These measures did not prove effective. Not a single offender was caught nor a single attack discovered in time. If anything, the presence of the police only put the "sundry evil minded persons" on their guard and led them to resort to devious maneuver; they were easily able to spot and outwit the special watch. Once in August, Brooks and Joy, who directed the legal action, thought they had cornered their game and were ready to make an example that would forestall further attacks, but found they had only caught a tartar. One of the special police, Elwood Cook, went to the grand jury of Jackson County and made out an information against one James A. Lester, charging him with obstructing the railroad. Attorney General Lothrop came out to Jackson from Detroit and prodded the grand jury into issuing an indictment against Lester.<sup>13</sup> It seemed as though the law were at last ready to step in and strike down the enemies of the railroad.

The law, however, reckoned without the determination of Fitch and Burnett. As soon as Lester was arrested, these two came to his defense. They unearthed evidence and brought witnesses to show that it was Cook who had obstructed the railroad and then laid the crime to Lester in the hope of gaining the \$500 reward. Fitch and Burnett presented these findings to the not wholly unsympathetic citizens of the Jackson County Grand Jury, which then found a true bill against Cook for perjury four days after it had indicted Lester. With the tables thus turned, Joy had to come to Cook's defense. Neither case, however, came to trial; both were eventually nolle prossed.<sup>14</sup>

This legal defeat convinced Brooks and Joy that they were using the wrong tactics. They realized that they were not facing a number of lawless individuals but a body of citizens united in hatred of the railroad and belief in the justice of their cause. Public sentiment in Jackson County was largely ranged against the Michigan Central and convictions by local juries would be difficult if not impossible to obtain. Detection of the guilty by ordinary police methods had proven ineffective. Action against relatively unimportant individuals, moreover, would not halt the attacks. The company faced the necessity of resorting to extraordinary methods to gain evidence against its enemies and then, of striking at the head and heart of the opposition, at its leaders, at Fitch, Burnett, and the more active of their followers. Brooks and Joy set their sights accordingly.

Fitch had without doubt emerged as the leader of the road's opponents. His position in the community and his opinions had led to his choice on the committee of three that acted for the citizens assembled in public protest; he had probably been active in organizing the meetings in the first place. Subsequently, his leadership was reinforced by the promptings of his conscience, by a self-imposed trust as advocate of the cause of his friends and neighbors. It was expressed in his activities on behalf of Lester and his public defense of the attacks on the railroad and denunciation of the company's policies. And Superintendent Brooks could only have concluded that Fitch was his nemesis, the gadfly of the opposition, when in the fall of 1849 he received a letter from him complaining of the fact that the trains were not stopping at Michigan Centre to pick up passengers who were giving the usual signal. "Now if this policy," Fitch warned in closing, "comes from you or your legal advisers, as did the insulting half pay proposition for killing cattle, if serious accidents do occur on the road, on your head, and yours alone, must rest the responsibility." Brooks promptly answered the letter with maddening politeness, if none too helpfully, by enclosing a handbill with a schedule of train stops. "If any train has passed your station, which according to it, should stop there," he explained, "I would be quite obliged for any information that will point to a specific train, when I can correct it." With that reply, the incident was closed; it was in itself not of great moment, but served to aggravate ill feeling and convince Brooks

that Fitch was the instigator of all the company's many troubles.

Abel F. Fitch was an amalgam of shrewdness and idealism that in most other men happily serves or is made to serve their own aggrandizement. In his case, the two ingredients clashed and eventually led to his downfall. He had come to Michigan with his wife from his native Connecticut in 1832 and located on the Clinton Road near Jackson where he opened a tavern which was soon widely known as the old "Fitch stand." Turning from whiskey to real estate, he took a profitable part in the speculative orgy of the middle 1830's. He invested some of his gains in the stock of the Jackson County Bank and was implicated in the collapse of that wildcat institution and made the target of several indictments for conspiracy in 1838. Like most of the businessmen in that frontier community, he emerged unscathed and unmoved and went on to become a leading public figure. When Michigan was admitted as a state in 1837, Fitch, now living in Michigan Centre, a community he had helped develop to his own profit, was a delegate to the convention which met to organize the Democratic Party in Jackson County. He enlarged his public services by organizing a squadron of cavalry, the Barry Horse Guards, in the state militia in 1843 and was commissioned its captain. Tenders of political trust by his neighbors made him Inspector of Elections in Leoni Township and local representative on the Board of County Canvassers in 1850 and 1851. On April 7, 1851, he was elected Supervisor of Leoni Township on the Democratic ticket. He lived in style at Michigan Centre, in a spacious home complete with verandahs and shade trees, on an estate valued at \$8,000 with more than five hundred acres of orchards, pastures, gardens, a lake, and a deer park, as well as productive fields. Gifted with a happy family of wife and two adopted children, numerous friends, and a sense of humor, enjoying his books, pictures and music—he played the clarionet—this prosperous country squire, the richest man in the township, could have proudly and thankfully rested on his laurels as he looked back at his full forty-three years.<sup>15</sup>

If only he had rested content to be as others in his station—solid law-abiding citizens, members of respectable churches, and vocal but realistic exponents of the ideals of justice and right. But Fitch possessed something of the Yankee conscience that held him to strict account and would take no tittle of compromise, that made

him a come-outer when silence would have been safer and deeds could have been dismissed as unnecessary and ineffective. In religion, he was, according to Burnett who knew him well, a Universalist, that rather broad humane American sect that was outside the pale of organized churchdom and orthodox doctrine. His belief in God was strong and real as was his faith in His goodness, though he spoke lightly of His conventional representatives on earth. Once, defending the men of Leoni, Fitch jokingly laid the shootings to a local Baptist clergyman, and to a Congregational divine in Jackson whom he called "Priest" Foster, and told how he had remonstrated with them to no avail, such hardened evil-doers were they. On the greatest moral question of the day, slavery, Fitch was on the side of freedom. According to one promoter of the Underground Railroad in Michigan, Fitch was its agent in Michigan Centre. When he was elected county supervisor, he was sneeringly classified as a free soil loco by the opposition Whig sheet. And when "Priest" Foster, the Reverend Gustavus L. Foster of the Congregational Church in Jackson, delivered a sermon denouncing the Fugitive Slave Law and counselling disobedience, he must have risen greatly in Fitch's esteem. For when Fitch was arrested and his person was searched, the only incriminating evidence found on him was a reprint of the Reverend Foster's "higher law" sermon. And his subsequent notoriety brought him the dubious acclaim of eastern newspapers as one of Michigan's most prominent abolitionists.<sup>16</sup>

Such was the man who had come forward as the advocate of the people's rights in the eastern part of Jackson County—a pillar of society, a shrewd but amiable country squire, and withal, a man of unorthodox bent, with principles, who did not fear to express and act on them. And when he spoke out against Brooks' policies, he was also moved by disinterested principle. "They done wrong," he later explained, "when they took the poor man's last cow without remuneration." His only crime was that he had the "indipendance to tell them [that] to their faces." There is no evidence that Fitch's own interests were at stake or in any way affected or that he stood to gain anything personally by his actions. "If money making was my object," (and Fitch knew well how to achieve that mercenary end), he wrote his wife, "I could sell myself to them for a great price, they have already made advances, but they have waked up

the wrong passenger." Nor is there any evidence, as was later alleged by the press, that Fitch was satisfying an old grudge against the railroad arising from a dispute over payment for a parcel of his land.<sup>17</sup>

Fitch did not, however, abandon all caution. Defending and abetting his followers, he never himself took part in any of the attacks. Publicly and before outsiders, he did not even approve, though he might extenuate the acts of violence that endangered the lives of innocent people. He preferred himself to fight the railroad where his influence could be most effective: in the courts, in the legislature, among his friends in the East whom he asked to discourage travel on the Michigan Central. And when Lothrop, now in the service of the railroad, saw Fitch helping in the legislative fight against the road in Lansing in 1851, the latter was sure that the former attorney general "had rather see the evel (sic) one than to have seen me . . . here."<sup>18</sup>

Fitch's adjutant in the campaign against the Michigan Central was Benjamin F. Burnett, the vocal lawyer from Grass Lake, honorifically known as Judge Burnett. The "Judge" was no more than a village lawyer, probably self-trained, a litigant as often as he was counsel, who had garnered neither laurels nor lucre in his profession. A man of some education and ability, he had also tried his hand at surveying, but by 1850, his total assets did not exceed \$800. His motives in working and clamoring for those who came to be known as the "railroad conspirators" are not clear. He may have been something of a maverick, having unsuccessfully run for county surveyor in 1848 as a Free Soiler. Ambitious, contentious, and not always scrupulous of legal and conventional niceties, he may have been fishing in troubled waters when he adopted the cause of the people. Once having made his choice, however, he stuck to it through abuse and imprisonment. His later journalistic crusade on behalf of the "conspirators," in and out of jail, helped keep the issue "before the people" until a measure of justice was realized.<sup>19</sup>

The third in the village triumvirate was Ammi Filley, brother-in-law of Fitch and owner of the tavern at Michigan Centre, next to the tracks, across the road from Fitch's house. His relation to Fitch, his comparative wealth, and above all, his control of seemingly unlimited supplies of whiskey gave him some standing among

the farmers of the locality, if it tarnished his name in the county at large. He had come to Michigan from Connecticut in 1833, and after unsuccessful business ventures in and around Jackson and some notoriety as the father of "The Lost Boy," William Filley, who disappeared among the Indians, had established himself as the tavern keeper of Michigan Centre. He was not poor: his property was valued at \$4,200 and he employed as many as twelve men on his lands, from which he sent fish and game to the Detroit market. Angered by the railroad's policy in some altercation over the building of fences, he nursed his hurt into vindictiveness and unrestrainedly denounced the road, prodded his friends and employees to violent attacks, and even personally put his hand to stoning the trains and obstructing the tracks.<sup>20</sup>

It was Filley's tavern that served as the natural headquarters where discontent was expressed, allayed, and fortified over the bar or at the card table or the nine-pin alley outside. Here grievances were loudly aired and anger fanned and the escapades hatched, more often than not under the influence of the liquor which Filley had ordered his bartenders to dispense so freely. "They generally drank by platoons," one observer reported of the almost nightly gatherings at Filley's. And if this popular rendezvous by the tracks was later denominated a "low country tavern," it certainly was the poor man's club in Leoni Township.<sup>21</sup>

Here Orlando Williams, the stone mason, bibulously boasted of his feats, imaginary and real, in getting back at the railroad. Here Bill Corwin, the shiftless teamster and occasional barkeep, who took his pay in liquid kind, got up his bravado for destructive sorties. Here the Price boys, Eben and Richard, blacksmiths by trade, joined in the roistering that sometimes led to drunken brawls and sometimes to alcoholic feats of derring-do. Here Erastus Champlin, farmer, and his two sons, Lyman and Willard, damned the railroad and swore vengeance. And here, too, came the railroad agents to gather their evidence of crimes committed and planned. Sometimes, too, the boys would journey to the tavern at Leoni village for a "ball" or to some "grocery" or hotel at Jackson where the usual round of quaffing, boasts, threats, and forays would be repeated.

During the long winter of 1849-1850 or, in railroad parlance, after the close of the season, activity and talk abated with the cold

weather. Once the lakes were frozen, through traffic fell off greatly if not completely, and the occasions and targets for depredations did not present themselves. But once the thaws came and the trains began to run again, the battle was renewed by both sides with increased vigor.<sup>22</sup>

During the spring, summer, and fall of 1850, resentment over more cattle killed and Superintendent Brooks' half-pay policy seemed to grow and intensify. Resentment was soon translated into threats and threats into violence. The burden of complaint was the old one: the company would never run over the road in safety until it paid up for property destroyed; if they could not get their revenge in one way, they would get it in another; they would let the company know there was "a God in Israel; the company would be glad bye and bye to pay up for cattle or if they did not they would catch hell." Lyman Champlin angrily threatened that if they did not pay for the old gray mare they killed, he would keep the railroad wood and fences on fire. In June, Burnett had a cow killed at Grass Lake and when a neighbor joked him for not commencing suit and getting pay for it, he declared he would have full pay or full satisfaction before he received for the critter. Bill Corwin, in the course of a conversation with a neighbor, pulled out of his pocket a printed pamphlet called "The Railroad Dream" and read aloud of a poor man's cow being killed and how he had sued the company and got nothing. "By Jesus," Corwin exclaimed, "is the people going to stand this? No, by Jesus, they'll catch it before long."

Sometimes, tongues loosened by alcohol talked in a kind of desperate confidence of a great coup or some ingenious plan to destroy the road at one blow. Jack Freeland once freely and openly described a plan for placing powder on the rails with a fuse running from it, so timed as to explode when the trains passed. Another time, Ebenezer Farnham, a dentist in Jackson who was as much given to drink as to the practice of his profession and who sympathized with the plight of the Leonians, emerged from a "grocery" in that town, collared a passing friend, pulled him into an alley, and said, "I want to tell you something for I believe you to be a pretty damned good fellow." The friend thought the doctor was pretty well corned as he went on: "The railroad—hell and damnation, the railroad will all be blown up in less than a month. . . ."

The happy dentist gloated in drunken glee, “\$10,000 all gone to hell in one minute and I’ve got the tools to do it,” and hung on to his listener for dear life. Orlando Williams promised the assembled company at Morrison’s grocery in Jackson that he would tear up the track from Michigan Centre to Leoni to make the company pay for cattle killed. At Hadden’s grocery in Jackson, Williams confidentially offered a fellow barfly a chance to make \$500 by burning the railroad company’s steamers, the *Mayflower* and the *Atlantic*, and bringing them to the water’s edge. At Filley’s one day, between drinks, Williams boasted that the company would be glad to eat salt out of their hands in a few days and that it should be made to pay double value for cattle killed. Bill Corwin almost matched Williams’ big talk about what he was going to do to the company. Once in Jackson, he had swapped horses with Caleb Loud, dealer in “Loud’s Celebrated Ointment” for horses, and the two were riding around the sheds by the railroad depot. Loud remarked that a fire there would sweep the whole lower town. Corwin put his hand on Loud’s arm and said, “Just remember my word, there will be one here before long.” Corwin also felt impelled to seek new recruits in back of Morrison’s grocery to tear up the track and burn the depot at Jackson, promising large sums of money.

None of these grandiose plans for destroying the railroad ever materialized. But attacks similar to those of the season of 1849 continued to harass the operation of trains between Grass Lake and Jackson. The summer and fall of 1850 were punctuated with the familiar shootings, stonings, obstructions, and burnings.

More than one evening, as a bunch of the boys were gathered at Filley’s, someone would suggest that they go and give them a few stones or “give them hell again tonight,” and a group would sally out to stone the trains amidst the startled cries of the passengers. One dark night in August, Filley, Jacob Wolliver, his devil or handyman, and the two Price boys got an ax and went out to throw the cars off. About three-quarters of a mile west of Leoni, where the tracks crossed a culvert over a six-foot bank, they broke the chairs that held the rails in place and moved them to one side. They then went off forty or sixty rods and lay down and waited. An eastbound train, pulled by the locomotive *Gazelle* came along and ran into the open track. The *Gazelle* ran off and capsized and

the train crews worked many hours getting her back on. Filley later described the incident as good clean sport: how when they went out cooning, the road was the best ground to go on; the *Gazelle* was a big coon they caught the other night but they had lost its tail, "but damn 'em," they will have that soon; it had taken a good many men to get the coon on the track again, and he did not want anything better than an ax and a crow bar to shoot a coon with. Fitch, too, indulged in his characteristic humor when he told how the *Gazelle* had got dry and, having no pump aboard, was forced to go down into the marsh for water.

During the state fair at Ann Arbor in September, 1850, a conductor later recalled, it seemed almost impossible to get through Leoni and Michigan Centre at night without some trouble. This was despite the fact that all train crews had been warned to proceed slowly and with great caution through these places. One night during the fair, this conductor was running a train west and at Grass Lake told the engineer he could run to Michigan Centre at normal speed. Soon a passenger asked him why they were running faster than usual and the conductor explained: "There is no danger; we have the head devils on board, and the gang will not hurt them." And he pointed down the car to where Fitch and Filley were sitting, on their way back from a visit to the fair.<sup>23</sup>

That same month, a group from the Centre had gone to Leoni village to help Ephraim Barrett in his law suit against the railroad company for damages for a cow that had been killed. Barrett had been offered \$15 and would have liked to accept that sum, but his neighbors urged him not to. The suit at Leoni was fruitless, and the men returned to Michigan Centre embittered. After their return, Filley and Wolliver went out and stuck a tie into the culvert west of Fitch's house so that it would strike the lamp on the next engine that came along. They also put a mudsill across the track nearby, and then retired from the scene. The freight train was duly halted and Fitch and Filley came up and innocently inquired what the matter was. Receiving no enlightenment from one member of the train crew, which was busy removing the obstructions, they repeated their question to another, and got only abuse in reply. "You damned hounds," the train hand cursed, "every one of you should be hung up." Now riled, Fitch and Filley went around to the rear of the train and put on the brakes. The two then went up the track

a way and hugely enjoyed watching the sparks fly from the wheels as the train struggled up a grade.

In October, the engine *Rocket* ran off at Michigan Centre after it had hit an open switch. Although the engine tore up the side track it was not upset, but it took about seven hours to get it back on the tracks. With each successful attack on the road, Filley took great delight in giving the company credit in some imaginary ledger against the unpaid balance for cattle killed—\$1 for each stoning and proportionately greater amounts for more substantial losses. Fitch, too, made estimates of losses the company had suffered and reckoned that the cattle killed between Grass Lake and Jackson had already cost the company about \$400 per head. These vengeful calculations also included mishaps on the Michigan Central with which the boys from the Centre had nothing to do, although they were later charged with them. Two such accidents must be laid entirely to chance or negligence. In June, 1850, a baggage car carrying United States mail took fire and was destroyed a little east of Jackson. Again, a train was thrown off the track at Leoni because a track crew had removed some of the rail at that point and the engineer had not seen their signal in time to stop.<sup>24</sup>

Fitch, except for the time when he had reversed the brakes on the stalled train, continued to confine his activities to those of public advocate. In Michigan Centre and in Jackson, he made no secret of his unyielding opposition to the railroad's policy and of his opinion that the trouble the road was having was fully deserved; that it was the only means of bringing the company to terms; that the depredations would divert travel from the road and "bring them to their milk." He justified the actions of his friends with an illustration: suppose a man owned a large tract of land near the town and the village cattle troubled him, he could dig pits and get the cattle into them—the land being his own, they could not help themselves—the owners of the cattle, however, had a right to take the law into their own hands and that would be their only remedy. Fitch's analogy is pertinent only if one remembers that cattle in that sparsely settled and unfenced country were regarded at law as free commoners and allowed to run at large.<sup>25</sup>

At times, Fitch not altogether jokingly laid the violence to the railroad police, adding that he would like to catch the spies on his land and "fix 'em out." In the same breath, he admitted that ston-

ing was "mild means" his friends were using and boasted that "the company was nearly used up now and had gone down with only fifteen passengers on one train." When someone accused Fitch himself of stoning the cars as they passed his house, he replied with brazen humor that it was "a damned lie" as he was upstairs looking out of the window at the attack.

To his respectable friends, Fitch talked with more caution and some hypocrisy. That fall, Alonzo Bennett, a merchant of Jackson, warned Fitch that the boys had already gone far enough and that a few words from him or a little labor would stop the depredations. Fitch replied that he knew that what the boys were doing was wrong and that they must look out. But, he went on, he had also told them to get pay for their cattle if they could, and if they could not, they must lay their plans so as not to get caught at it. He concluded piously that if the company would only pay full value, "they would have God almighty on their side and be prosperous." About the same time, when the Jackson *American Citizen* editorially condemned both the company for not paying full value and the residents of Leoni for taking the law into their own hands, Fitch personally assured the editor, Charles V. De Land, of his "perfect sympathy" with those sentiments.<sup>26</sup>

Fitch's advocacy of their cause and the failure of the company to catch any of the offenders gave the Leonians a feeling of confidence. Bound together by their grievances and sense of wrong, they were further united in a community of interest by the unhampered successes of their campaign of retaliation and by the conviction that in Fitch they had a protector and influential intercessor with the powers that be. They knew that Fitch was on their side, that he had friends in high political place, that he had a "long head." They were certain "he would stick by them as long as he had any blood left in his body." Too, they were sure that they themselves would stick by one another and find shelter from the law in their common fraternity. They bragged of standing by one another "to swear any hostile witnesses to hell." As Bill Corwin put it: "They could prove that [a] horse was a blacksmith shop and every hair on him a candle if necessary." They counted on their ability to get witnesses of their own to clear them of any criminal complicity. They felt certain that no jury in Jackson County would ever convict them for any act against the railroad.

All these acts and declarations did not, however, add up to a conspiracy within the legal meaning of the term, as was later charged by the state. There was no organized gang with constituted leadership that deliberately planned attacks on the railroad for a clearly conceived common end. The opposition to the Michigan Central in Jackson County was rather a loose and informal affair, with an open and reckless impulsiveness, entirely lacking in secrecy, compounded of common resentment, illegal intent, alcoholic spontaneity, and criminal acts. It verged on conspiracy but never quite jelled into the necessary consistency of purpose, method, and execution.

This communal hostility to the railroad also had its roots in complaints other than those over the destruction of livestock. The additional sources of friction did not loom so large in the minds of those who frequented Filley's tavern or went out to stone the trains from Fitch's peach orchard. But elsewhere in Jackson County and in the state at large, they created strong resentment against the railroad, which together with the ill will engendered by the killing of cattle, was the basis of a broad antirailroad movement that sought publicly and legally to regulate and curb the powers of the offending corporation.

Inevitable sources of friction were the condemnation proceedings for lands taken over for the right of way, stations, warehouses and shops, as well as the contract jobs for the construction of fences along the line of the road. Farmers invariably found the company's offers too low and the resultant court proceedings only served as irritants. Fences remained unbuilt or in some cases were even torn down. Even the man of God at Marshall, John D. Pierce, refused to build fence at the company's price of \$1.75 per one hundred rails. In the mind of one young farm laborer, the chief subject of discussion at Michigan Centre during the many months he worked there was the company's wage policies. He remembered that there was something said about the railroad being a monopoly, and that a feeling was getting up against them because they hired help very cheap, did not pay wages enough, and had a tendency to render wages low. Once Fitch, elaborating on the complaints against the company, catalogued the whole list of its sins. He reiterated his charge that it was "a damned monopoly." He said he thought "the road was damned poorly managed and that a boy ten years old

would manage it better than Superintendent Brooks." He thought the chief engineer in charge of construction would be a better superintendent than Brooks, for *he* thought the company ought to pay for cattle killed. Fitch said the road carried produce from Niles as cheap as it did from Jackson, and that it had fixed the price of men at \$500, referring to the amount paid to the widow of a man who had been killed by a train the year before at Galesburg.<sup>27</sup>

It was the charges of unfair freight rates and monopoly practices that were taken up most widely in the state. Jackson County shippers had complained of high rates back in 1846 when the state had owned the railroad. Then, in 1848, some shippers in Kalamazoo had protested to Superintendent Brooks against what they thought was unfair discrimination in the rates for carrying their produce to Detroit: the rates from Niles to Detroit were less than those from Kalamazoo to Detroit, a shorter haul by some fifty miles. Brooks, in a published pamphlet, justified the cheaper long-haul rate by the necessity of meeting water-shipping competition at Niles, which had access to Lake Michigan via the St. Joseph River. The cheaper rates and hence the greater volume of business from Niles, he argued, actually enabled the company to charge lower rates from Kalamazoo than would otherwise have been possible. In 1849, after the railroad had been finished to New Buffalo on the lake, the Whig *American Citizen* of Jackson, with no desire to ignore a popular issue, took up the hue and cry. Its editor fulminated against the "dastardly course" the railroad had pursued in charging the citizens of the interior of the state nearly double the price charged those of other states for half the distance. Brooks evidently was fighting the lake shipping companies for the Chicago and Milwaukee trade with the weapon of cheaper long hauls. But the Jackson editor could only see the "enormous charges" of the "Central railroad monopoly" which in his mind were responsible for the lower prices that local products brought and the bad state of business in general in Jackson County. He denounced the road as a "shameful monopoly" and a "humbug concern," and repeatedly urged the necessity of a connecting line from Jackson to the Michigan Southern Railroad at Adrian to give Jackson shippers another outlet to the east, at Monroe on Lake Erie, and thus break the monopoly of the Michigan Central.<sup>28</sup>

The accumulated grievances snowballed into a strong anti-

monopoly sentiment. Again and again, in the press, in the legislature, at meetings of citizens, and in Filley's tavern, the railroad was attacked as a corporate monopoly whose greed would not be satisfied until it had gobbled up the wealth of the state and the freedom of the people. Fitch and his friends, as we have seen, did not hide their feelings about the absolute corruption of this absolute economic power; one of the company's spies, in order to gain their confidence, found it advisable to talk "against the Road" and call it a monopoly. An angry citizen wrote a letter to the *American Citizen*, which, echoing the editorial opinion of the paper, rang the changes on the theme and demanded to know how long the people would suffer the railroad to dominate them. At Coldwater and at Napoleon, the citizens met to protest against the monopoly of the Michigan Central Railroad. In the legislature at Lansing, the drift of public opinion was crystallized in the warning that "the Michigan Central Railroad Company may possibly, sooner or later, discover that they did not make the State of Michigan, but that the State of Michigan made the company."<sup>29</sup>

Opposition to the Michigan Central's privileged position must have been strengthened by a decision of the Supreme Court of Michigan in July, 1851. A farmer in Wayne County had brought suit for damages against the company for horses that had been killed by a train. The county court sent the case up to the Supreme Court for adjudication, possibly as part of the same plan Superintendent Brooks had offered to the citizens of Jackson County. The court decided, Judge Abner Pratt of Marshall writing the opinion, that the railroad was not bound by its charter or the common law to fence the right of way for the protection of other persons' domestic animals, and that inasmuch as the operation of trains was entirely lawful, it could not be held liable for accidental damage to property where no negligence on its part was proven. On the face of it, this decision seemed to bear out all of Fitch's accusations against the company and the courts. As one citizen expressed it in a letter to the newspaper: "Railroad gold bought [the] decision." And even the Democratic paper in Jackson, though accepting the court's decision, felt moved to criticize the company for not going beyond the law and paying fair value for cattle killed in a newly settled state where the farmers could not possibly have enclosed pasturages for their livestock.<sup>30</sup>

Judge Pratt, in denying the validity of one contention of the plaintiffs, suggested a method of redress. He held that the broader argument that the Michigan Central's charter "contains powers and privileges which were improvidently granted by the legislature . . ." had no bearing on the case at hand. In thus limiting the competence of the court, he was suggesting that what the lawmakers had given, only the lawmakers could take away. This conclusion, which the opponents of the road had more than sensed heretofore, was now driven convincingly home. Their future course of action was ineluctably fixed—a campaign to amend or even annul the railroad's charter, and in the name of justice, freedom, and competition open the way for the general incorporation of all railroads under a system of public regulation.<sup>31</sup>

The charter that the legislature had granted, or more precisely sold, to the Michigan Central Railroad in 1846 had indeed conferred monopoly power in perpetuity on the corporation. Though not without protest on democratic grounds against the lordly grant, on the one hand, and powerful financial pressures for it, on the other, the legislature had to a degree acted under the influence of an older conception in creating a corporation with monopoly privileges. It had enfranchised a body politic to act for a desirable public end where the state had been unable to achieve that end. The corporation was, in theory certainly, an arm of the state, not yet wholly a mere business form, and as such entitled to the fullest measure of power and protection to enable it to realize its specific corporate aims. The rapid development of economic forces, the American conception of equality of opportunity for all, and the instinct that the state had no interests aside from those of the people soon brought this mercantilistic conception of the corporation under attack. Monopoly was reviled as oppressive and destructive of the rights of freeborn citizens; it stifled the development of a new country; only regulation by the people and competition through the multiplication of corporations were consonant with the ideals of this new-found land of liberty.<sup>32</sup>

John D. Pierce was voicing this point of view in 1849 when he coupled his attack on the railroad's policies with the contention that the legislature had no authority to confer on a corporation "rights, the exercise of which would bring them into daily collision and conflict with [the] citizens." In other words, he was arguing

that the actions of the company since its incorporation had been such as to invalidate its franchise. The next year, Pierce carried his fight from the newspapers to the constitutional convention where he served as a delegate from Calhoun County. He introduced the resolution which was later written into the article on corporations of the revised constitution, making possible the formation of corporations under general laws and forbidding the legislature to pass any individual acts of incorporation except municipal. This provision, while not affecting those special charters already granted, was designed to prevent the issuance of corporate charters with special or monopoly privileges usually wrung from the legislature by political and financial pressures. It was also prompted by disgust with the dogfights of opposing lobbies which besieged the legislature at each session, requesting new or protecting old charters, amidst loud charges of corruption. Thus, by constitutional action, the status of the corporation in Michigan was transformed from that of a privileged arm of the state to an ordinary business form accessible to all qualified applicants. While the state thereby lost its power of directing economic enterprise to desirable ends, it retained, in principle, its power to regulate business in the name of the public welfare.<sup>33</sup>

The new constitution as adopted also forbade the renewal or extension of corporate charters previously granted and removed the thirty year period of grace within which these charters could not be amended. With no success, Delegate Pierce tried to make a general incorporation law for all business enterprise part of the constitution in order to give positive effect to the mandatory provision. And he fought generally, though in vain, to curb the powers of the corporate monopolies. He insisted on holding up the public interest as the supreme criterion of the right to a corporate existence. "When a charter becomes detrimental to the public interest," he asserted in the constitutional debates, "it ceases to answer the professed end of its creator, and may and ought to be repealed. . . Those vested rights, created by charters, must yield, when they come in conflict with the supreme law—the public good." Remembering his own and others' losses of cattle, Pierce also introduced a resolution providing that "In all cases where damage is done by any corporation to private property, the corporation shall pay to the full amount of such damage." When this resolution was

buried in committee, Pierce later offered an amendment to the article on corporations to the same effect, but that too failed of adoption.<sup>34</sup>

The railroad interests were also able to fend off regulatory attacks in the legislatures of 1850 and 1851. These attacks were led by Michael Shoemaker, who owned a flour mill in Michigan Centre and represented Jackson County in the state senate. As chairman pro tem of the senate and chairman of its committee on incorporations, he was a figure of some importance in Democratic councils. Twice, in 1850 and in 1851, he introduced a bill to provide for police regulations along the line of the railroads, requiring the companies to fence their roads, build cattle guards at crossings and maintain warning signs there, and put bells on the locomotives. Shoemaker stated that the object of his bill was to "protect our farmers from the loss of their cattle by being run over by trains of cars." The opponents of the bill necessarily approved of this worthy aim but insisted that it infringed on vested rights, despite the opinion of the attorney general to the contrary. The bill passed the senate twice but was twice defeated in the lower house by the influence of the railroad lobbyists.<sup>35</sup>

Fitch, too, spent two or three weeks in Lansing in 1851 as self-appointed lobbyist for the people, using whatever influence he had to support any measures that would put pressure on the Michigan Central. He undoubtedly worked hard to get Shoemaker's bill passed. He joined forces with those who were trying to get a railroad built from Jackson to Adrian to give Jackson an alternate outlet for its products. The completion of this railroad, which had been chartered in 1836 as the Palmyra and Jacksonburg and had been built only to Tecumseh, had been required of the Michigan Southern by the terms of its original charter. The Southern, however, had done nothing, and the Jackson interests, led by Amos Root, merchant, now in 1851 exerted themselves to get it to carry out this part of its charter. For its part, the Southern had no particular interest in the Jackson Branch, as the projected road was known. But it was now engaged in a race with the Michigan Central to push through to Chicago, and the two rival roads were fighting each other in the legislatures of Michigan, Indiana, and Illinois. John Stryker, chief of the Southern Railroad lobby, accordingly held out the bait of the Jackson Branch to the Jackson

County people to get their support for his own bill to allow the Southern to leave the state of Michigan on the road to Chicago. Root, Fitch, and the others were not loath to give Stryker this support and use the Southern Railroad as a cudgel in their own fight with the Michigan Central.<sup>36</sup>

Stryker was not able to muster the necessary two-thirds majority for his amendment to the Southern's charter. He then shifted his strategy and backed a general railroad incorporation law requiring only an ordinary majority vote, planning to get the connection with Indiana under such a law. The Jackson foes of the Michigan Central wholeheartedly supported this move, it being entirely in accord with their own plans too. Shoemaker of Jackson reported out such a bill from his committee, but here too, the Central forces under the leadership of James F. Joy were able to defeat it.<sup>37</sup>

The Michigan Central Railroad, it seems, had much greater success in coping with its opponents in Lansing than with those in Jackson County who were determined to bring it to terms by violence. The summer of 1850 had come and almost gone and Superintendent Brooks had not as yet been able to apprehend any of the criminals. The situation became, if not desperate, measurably aggravated as the railroad's troubles were bruited about in the East and began to drive travel to the lake steamers. The whole task of ferreting out the predators and collecting enough evidence to convict them required more attention than Brooks could spare from his large duties. Different and more thorough methods would be necessary to breach the protective community-consciousness of the men of Michigan Centre, Leoni, and Grass Lake.

Brooks' first step was to hire, some time in the summer of 1850, Darius Clark of Marshall to undertake the job of catching the felons. Clark was an experienced business man, a member of the firm of Nash and Clark of Marshall, contractors who had done construction work for the railroad in western Michigan. He was a quiet, likable man, not hitherto mixed up in the controversy, and unknown to the "conspirators." He got to work in August and hired a number of agents who were to operate secretly at Michigan Centre. Some were friends or employees of his from Marshall who went to the Centre and worked there in one fictitious capacity or another. Others were men from Jackson and vicinity who were put to watching the tracks at two dollars a night in the troubled area.

Still others went to the Centre on a full-time basis and lived and worked there, watching, talking, listening, drinking, and making reports. Clark also used the railroad's money, men, and facilities to seek out persons who had lived in or near Michigan Centre during the trouble and had since moved away, in order to get them to tell what they knew.<sup>38</sup>

In a short time, Clark was directing a small organization of secret agents or spies, or "colonists," as John Murray Forbes, president of the railroad, liked to call them, who met their chief at intervals in Jackson, Marshall, or Detroit and made reports and affidavits as to their findings. Clark reported on his progress directly to Brooks in Detroit, sometimes in person and sometimes by messenger. His written reports show that he worked slowly and cautiously but determinedly. "Time and deliberation will surely do it," he advised Brooks. "There is nothing gained in pushing this thing fast," he assured his anxious superior, and kept stressing the need for absolute secrecy on the part of all concerned.<sup>39</sup>

Not being a lawyer, Clark got the judge of the Circuit Court of Jackson County and *ipso facto* a member of the Supreme Court of Michigan, Abner Pratt, of Marshall, to help him to evaluate the evidence. Pratt, who was to write the Supreme Court decision absolving the railroad of liability for property damage little more than a year hence, took hold of the matter "with his usual energy." By the middle of August, he was assuring Clark that he had enough evidence for a strong case, with the latter insisting cautiously that it was not enough. Soon Pratt was saying—with what degree of judicial impartiality is difficult to surmise—that "if it is all right he will guarantee a conviction." Clark still demurred: "I am not so confident yet." By the end of August, as the evidence kept coming in, the judge told Clark that conspiracy charges were the best method of attack and actually drew up the form of an indictment for conspiracy against Fitch and the others, and sent it to the prosecuting attorney of Jackson County to be used before the grand jury at the proper time. By November, Clark was "in hopes" that he had sufficient evidence to spring the trap, and halt the increasing number of accidents that now plagued the trains in the vicinity of Michigan Centre. First, however, he wrote Brooks that he would like to show him what evidence he had so far, as though to have Brooks dispel whatever doubts he, Clark, might have,

adding that he expected more "would be brought out on a trial."<sup>40</sup>

Clark's instinctive caution got the upper hand and no arrests were made at the time. A new and unlooked for contingency, the destruction by fire of the freight depot in Detroit, changed the whole aspect of the case and demanded further and more thorough investigation. In any case, a large part of the evidence thus far obtained was indirect, consisting of admissions by Fitch and his friends to the agents, and hence highly vulnerable in court. The amount of direct proof was understandably small, in view of the secrecy in which the road's enemies cloaked their operations. The entire investigation, moreover, was greatly hampered when one of Clark's chief agents was early discovered and exposed as a spy. All the other agents were then sooner or later compromised as the Centreites came to suspect anybody and everybody who had not for years been a resident of the community. And the doubled caution of Fitch and his fellows made the procurement of further direct evidence by other spies commensurately difficult. Fitch, undoubtedly the brains of the group, became exceedingly cautious, "knowing as [he] did that large rewards had been offered for [his] conviction and that secret spies were laying in wait for [him]."<sup>41</sup>

It was at this point that William D. Wescott, the exposed spy, greatly aided Clark by making available new sources of information. Wescott was one of the first agents that Clark hired and at the time, in August, 1850, was a clerk in a hotel in Jackson, about to take a job as a guard in the state prison there. He had behind him a nondescript career as barkeep and unsuccessful business man in Nankin, Wayne County, and up north at Mackinac, where he had been under indictment for forgery. Of shrewd though limited intelligence, he had probably been referred to Clark by the railroad officials in Jackson because he had lived in Michigan Centre in the spring of the year and still went there on Sundays to see his wife who boarded with her father.

Clark first had to get Wescott temporarily released from his prison job. Brooks wrote Justus Goodwin, superintendent of the prison, asking for Wescott's services for the railroad "for a couple of weeks or so" without revealing the purpose beyond the assurance that "he would be of most essential service to us, and probably to the public, in the furtherance of some matters of public interest as well as of the interest of the company." Goodwin oblig-

ingly released Wescott, pointedly informing Brooks that the "scoundrels" in Leoni Township had aroused nothing but indignation in Jackson. Clark thereupon put Wescott on the payroll as a secret agent at \$40 a month, even though he could not altogether overcome his distrust of the man. He had not been too well impressed in talking to him and doubted his integrity. He suspected him of "playing a double game" and did not like the fact that Wescott "call[ed] for money the first thing."<sup>42</sup>

Wescott went to Michigan Centre on August 19 to live with his father-in-law. He spent his days talking and drinking with the boys and "laying out at nights" in Fitch's and Filley's yards, along the track, or eavesdropping under Fitch's windows. He let it be known that he was taking a long rest at Michigan Centre because he was tired of tending bar and "it was too hard for him to be up so much nights." At the tavern, he talked against the railroad, called it a monopoly, and advertised his hard feelings in order to gain his listeners' confidence. Fitch called him "one of the boys" and the accolade was confirmed by a drink on the part of all present. Wescott was soon on quite intimate terms with Fitch; the latter invited him to his parlor to eat fruit and drink cherry whiskey and brandy and confided all that had been done and all that was planned against the railroad. He had so far advanced in the good graces of Fitch that the latter actually proposed to him to take over and run Filley's tavern. Fitch assured him he would make money and said it would accommodate him and his friends to have it kept up better than Filley kept it.

Wescott was thus in a position to gather much information for his employer on the sentiments expressed, the crimes committed, and those planned at the Centre. He must have greatly endeared himself to Clark and Brooks when he warned of a projected "grand smash" at the time of the state fair in Ann Arbor in September, 1850. He reported to Clark that Fitch had told him that he and the boys were determined to bring the company to terms before the state fair was over; that he, Fitch, meant to show the people of Michigan that the feeling against the company did not exist alone in Leoni by throwing off the cars all the way from west of Jackson to east of Grass Lake; that they hoped to kill 100 to 150 passengers during the fair and if that failed, to burn the railroad depots at Detroit, Ann Arbor, Jackson, and Niles. He further revealed that

Filley planned to throw off a train at the Dry Marsh where the dead passengers would be buried so deep in the mud that there would be no need of coffins or sexton. The whole murderous plan, according to Wescott, was to be climaxed by a demand of \$100,000 blackmail from the company to call off the attack. Wescott's horrendous report led to immediate action. A special train was sent out before the fair began and nearly a hundred special watchmen were stationed along the track at the threatened points. Clark and Brooks were certain that this timely action forced the conspirators to give up their evil design and credited Wescott with saving the railroad from destruction.

It was not long before Wescott's real purpose at the Centre was discovered. Once or twice he had narrowly escaped being caught on his nightly prowls, but his luck ran out after he had been at the Centre not more than a few weeks. One evening early in September, Benjamin Gleason, who was a friend of Fitch and who worked at the state prison, came down to the Centre to see him. Fitch, Filley, Wescott, and a fourth were playing euchre in the parlor. Gleason called Fitch out of the room and told him that he had seen a letter at the prison in which Brooks asked for Wescott's services and that he was probably a railroad spy. Fitch went back and called Filley into consultation. Wescott sensed that something was up. When Fitch and Filley returned the game was resumed, but there was a coolness in the air and they did not play euchre much longer that night.

A few days later, Gleason came down once more and this time produced Brooks' letter to Goodwin. It was not certain proof of Wescott's treachery but showed that he was working for the railroad in some capacity. Gleason summarily accused Wescott of being "a damned railroad spy" who ought to have his throat cut. Filley confronted the suspect the next day with Gleason's evidence but he coolly denied he was a spy. Fitch called Wescott to his house and asked him if Brooks had employed him as a spy. When he denied the accusation, Fitch asked him to explain away the letter. Wescott, thinking fast, answered that Brooks had hired him to trace a trunk that one of the railroad's patrons claimed had been lost. Fitch was incredulous and said the company had bigger business to look after and that the letter was proof enough for him that he, Wescott, was a spy. The latter then suggested, with more

audacity than cunning, that Fitch go to Detroit and check the matter with Brooks.

Knowledge of Brooks' letter sufficed to convince most of the patrons of Filley's that Wescott was a spy. They avoided him but did not fail to let him know in one way or another what they would do to spies in general and him in particular if he were ever to testify against them. Fitch threatened to shoot him on the stand and if he couldn't do it himself, "by God, he had friends enough that would do it." The boys added their own threats to Fitch's and declared that they would shoot a spy as quick as they would a dog. Later, they discussed a plan to bludgeon Wescott to death and made sure that Joshua Wells, Wescott's brother-in-law, overheard them. Wells, as expected, carried the news to Wescott and the latter immediately informed his employers that his life was in danger. He even told Clark that he himself had crawled under the floor of Filley's tavern and heard his life auctioned off for \$100. Clark, realizing that the man's usefulness was at an end, gave him a job in the depot at Detroit. This did not prevent Wescott from carrying on officially as a self-styled detective, but by March, 1851, even Clark had had enough of him. He asked that Wescott be given something to do that would "keep him off the railroad entirely," giving as his reasons that the fellow just could not get along with the other men working on the case. A little later, Clark kept the irrespressible Wescott from making a trip east in search of information because he felt that his lack of discretion might harm the whole investigation.<sup>43</sup>

Before Wescott had left the Centre, he had been able to do a great service for his employers. He persuaded two young men of the place to come out and tell all they knew on the promise of good jobs with the company. In September, he got Horace Caswell, a young laborer who had never had more than odd jobs at the Centre, to go to work at the railroad depot in Detroit. Two months later, Caswell was making out affidavits to help build up the company's case against the conspirators. In November, Wescott told his young brother-in-law, Joshua Wells, of his own work with the railroad and promised him he should have a good situation if he would come out and be a man. Wells accepted the offer and was also placed in the Detroit depot, and soon thereafter began to provide Clark with valuable evidence. Both he and Caswell were able to

incriminate Fitch himself by telling how he had given them his pistols to use in shooting at a train, although they never had actually discharged them.

One other young resident of the Centre, however, proved not so pliable as Wells and Caswell and was to suffer for his obduracy. Miner Laycock, scarcely twenty-one years old, also jumped at the opportunity to go to work for the railroad in Detroit, but when he found out it meant betraying his friends at Michigan Centre, refused to talk and was summarily dismissed. He later was arrested with the other "railroad conspirators" and spent six months in jail.

Of all those to turn state's evidence, Jacob Wolliver delivered the most damaging blows to Fitch and company. Wolliver had lived at Leoni during the summer of 1850 and worked for Filley most of the time, tending bar, trapping pigeons, fishing for pickerel, and doing odd jobs. Filley called him his "devil" and had always found him ready to go out and tear up a piece of track or stone the trains, especially after he had been fortified by some of Filley's whiskey, to which he had free access with no questions asked. Along about the fall of the year, Wolliver succumbed to the blandishments of the railroad and accepted a job at Albion. As he was about to leave, he found himself at odds with his employer, Filley, over the amount of his wages, claiming that he was not being paid enough and that he was being charged for more whiskey than he had consumed. The two finally compromised on a deduction of six to eight dollars for a barrel of whiskey, but Wolliver left dissatisfied, even after Fitch himself had called him in and tried to mollify him, realizing that Wolliver knew too much to leave the Centre with any ill will. From Albion, word soon came to Filley that Wolliver was going to testify against his former employer and friends. Filley was not too concerned over the prospect of Wolliver's betrayal for he was sure that they "could swear him to hell." He went to Albion, nevertheless, to caution him not to talk, for he felt that a little caution "went a damned ways" sometimes. Filley reinforced his warning with a threat, but Wolliver had made up his mind to reveal all and was able to give Clark some direct first-hand evidence of attacks on the road by himself in company with the boys.

The defection of their own kind and the exposure of Wescott embittered the boys to the point of overweening suspicion. They

reiterated with vigor their threats against spies and ranted of the murderous means they would use to stop the mouths of informers. At times, the more volatile of them, in the heat of argument or in their cups, even let their hatred and suspicion explode into brutal violence against someone they distrusted or merely disliked.

One of the strangers in their midst they soon figured to be a spy, and correctly so, was Harvey Dixon, who came from Marshall and posed as a wheat buyer for a Detroit firm. Dixon stupidly gave himself away by paying too much for his purchases and had to leave after a brief and unfruitful stay at the Centre. The morning he left, Jack Freeland sent him off with a bitter tirade.

There's that damned wheat buyer—you didn't buy my wheat did you? God damn you I didn't mean you should. I thought you was feeding soft soap, and I eat a good deal of that before I came to this country. I didn't speak to you did I? I didn't mean to, for I didn't like your looks.

Even an innocent like Hiram Dexter, who came to the Centre to build the ball alley outside Filley's tavern, was suspected of spying for the railroad and was warned that he had better be careful and not offend any of the boys lest they knock him over. And when old Alonzo Holmes, who boarded the track hands at his house, offended Orlando Williams, that hothead brutally assaulted the helpless old man. There had been some talk of Holmes and his wife being spies and it was proposed to tar and feather the couple. Suspicion had somewhat abated, when, one day in August, 1850, Williams accused Holmes once more. Holmes was sitting on the steps at Filley's chatting, when Williams came up, pulled the old man off the steps and shouted, "They do say you are a railroad spy." Holmes coolly replied, "It's nobody's business if I am." Subsequently, inside the tavern, at the bar, Williams picked up a bottle and yelled at Holmes, "You are a damned pusillanimous." (This can only be the court reporter's substitution for profanity, *à la* Hemingway.) When Holmes replied, "You are a ditto," Williams threw the bottle at his head and broke the old man's jaw, knocking him unconscious. Williams later boasted in Morrison's grocery at Jackson that he had "nearly laid out one damned spy and wished to God he had killed him." He added he would kill a railroad spy quicker than he would a "massasauger." Another time, Williams' nasty temper brought him to blows with William Dobbs, whom he did not like because he had refused to join the boys in an attempt

to nail a plank on the track. Even Fitch had afterward sneeringly asked Dobbs if he were going to engage with the company the next season. It was at Warner's grocery in Jackson that Williams and Dobbs got into an argument over the comparative sizes of a gold dollar and a five-cent piece. Williams flared up and dared Dobbs into the back room to fight, calling him a "damned scoundrel" and telling him he would whip any man engaged with the railroad company. This time, Williams himself was "whaled slightly" and may thereby have had his suspicions of Dobbs dispelled.

One of the spies, Hiram Sherman, was with great cunning able to parry the distrust of the Centreites and neatly turn the tables on them, trapping two of them in a criminal act. Sherman was a longtime resident of Leoni village and was hired by Clark early in October at a wage of \$25 a month. He went to the village to work for one of the farmers there and was duly suspected of being a spy. One day, at Filley's, he spoke of quitting his job on the farm and Bill Corwin taunted him, "I suppose you think you can make more by laying out at nights." Sherman's chance to return to grace came not long afterward. He was present at the ball alley outside the tavern when Corwin got into an argument with John Palmer. The two began twitting each other and finally had a clinch, with Palmer backing Corwin against the wall. Sherman stepped in between the two and held Palmer off. After the fight had been broken up, Sherman and his new friend, Corwin, went out to an old railroad car standing on the track nearby and made up in a burst of mutual confidence. As Sherman later described their conversation:

I told him I knew he thought I was watching for the railroad, told him I *was* watching for the road, but that whatever he said to me, he need not fear me going to the road with it, that he knew me well enough for that . . . that I could watch on his side as well as for Mr. Clark and the road, and could tell him what the company was doing . . . told him I watched for money and did not care anything for the road more than to get their money . . . told him I would do anything I could for them.

Corwin was completely won over by this frank confession. He said all he wanted was that Sherman should let them know what the company was doing and be on their side and didn't care how much money he got out of the company. Sherman then cleverly warned Corwin not to give his game away to Clark for then he would be

discharged and would not be paid for what he had already done. Corwin assured him he would tell no one but Fitch.

Early that November, Sherman's new loyalties were put to the test. As he later told the story, Corwin approached him in Jackson and asked him to help steal some barrels of flour that night from the freight cars sidetracked at the Centre. The plan was to set fire to a pile of lumber as a diversion, and, while the railroad police were busy with the fire, steal the flour. Corwin added that if Sherman did not join him, he must keep still, but that he and Eben Price were going ahead with the plan anyway. Sherman agreed to join the two. Before he returned to Michigan Centre, however, he revealed the plan to the railroad officials in Jackson.

According to Sherman's account, the three met that night in the tavern at the Centre and imbibed some liquid courage. Filley asked them if they were going fishing and Corwin in reply merely asked him if he had an old ax and then went and got it. Price then complained that he hadn't "the first damned thing to fight with" in case of trouble so Filley gave him a knife. As the three left, Filley wished them good luck and told them if they wanted anything after they got back, there was the bottle. On the way to the lumber pile, Corwin suggested turning the switch but realized they had no tools for that task and Price cautioned, "One thing at a time; we will burn the wood tonight." When the little group arrived at the woodpile, they reconnoitered the area a bit. Price nervously suggested, "If any one comes we will run to the woods." Corwin replied he would "be damned if he'd run" and told Price he'd better stick by him and fight it out. As they set the fire, Sherman kept looking around nervously for the police he expected to be on hand. He soon saw what he was looking for—several men crawling along the ground nearby. Relieved, he rejoined Price and Corwin, and a moment later, the three were arrested and taken to the jail in Jackson.

At long last, it seemed that Clark had the best kind of evidence against at least two of the road's enemies and would be able to send them to jail. The grand jury, after some "higgling," brought an indictment against the three. Corwin and Price pleaded not guilty. Bail was fixed at \$1,000 each and loyal Ammi Filley promptly gave bond for his two friends. Sherman, too, was released on bail offered by a railroad official. The trial was set for the March term of court.<sup>44</sup>

Pending the trial, Sherman returned to the Centre but did not stay long for his treachery was known. Fitch pointed him out one day to a group at the tavern and said, "There is one of the damned railroad spies, just such men as they get to watch the road and burn the company's wood." Turning to Corwin and Price, Fitch sardonically continued:

Boys, I should think you would remember Sherman in your prayers, if you don't go to bed till late. I should, if he had been in company with me and had turned traitor. If he had turned traitor to me, I should like to finger my knife around his ribs.

Sherman left soon after for the safety of a job in the railroad warehouse at Marshall at one dollar a day. At the Centre, meanwhile, alibis were being prepared and public opinion was being educated. Sherman was described as a tool of the railroad who under orders had entrapped innocent men and instigated the whole venture; he had gotten Corwin so drunk that he had had to lead him to the lumber pile and then set fire to it himself. Corwin told Caleb Loud, the dealer in horse medicine, that they never would bring him to trial for burning the wood; if they did, they could not convict him, as they had witnesses enough to swear him clear. He asked Loud to use his influence for him by talking among the farmers south of Jackson before the trial.

As the day of the trial approached, Clark became convinced that it had better be postponed. He preferred not to "stir up the ire of Michigan Centre" just yet. He had come to share the belief of his new legal adviser whom he had hired in December, John Van Arman, the astute criminal lawyer from Marshall, that these men could never be convicted in Jackson County. James F. Joy, the company's chief counsel, did not share Clark's hesitation and wished to bring the men to trial as scheduled, hoping to draw out information in the course of the trial of the two that could be effectively used against the rest of the group. Clark insisted that nothing new could thus be uncovered that he could not get from his secret agents. He did join Joy, nevertheless, in a bold plan to get the case removed from the jurisdiction of the judge of the Jackson County court. Legislation to effect this change of venue was necessary, and Clark and Joy went to work to get it, the former in his new capacity as member of the house of representatives from Calhoun County. With the aid of the state attorney general and the

prosecuting attorney for Jackson County, they pushed through a bill in the 1851 session of the legislature which provided for the removal of criminal cases from the county courts to the circuit courts at the option of the prosecuting attorney as well as that of the defendants.<sup>45</sup>

Despite this legislative victory, the case of Corwin and Price never was brought to trial. Clark really had bigger fish to fry. His comparative indifference to the case of the two who had set fire to some railroad lumber was prompted by his greater interest in a bigger charge of arson which he hoped to pin on the whole cabal at Michigan Centre. As he explained to Brooks in March, 1851, "I think these [two] fellows had better be kept along and come in with the others, it will be less trouble and expense and in making the main thing more sure."<sup>46</sup>

The "main thing" referred to the destruction of the freight depot in Detroit less than two weeks after Corwin and Price were arrested. Early on the morning of November 19, 1850, the Michigan Central freight house in Detroit, built less than a year before, burned to the ground with all its stores of flour, wheat, and corn. The loss to the company was estimated at \$40,000 which was not covered by insurance, and the value of the stored freight was more than \$100,000. One Detroit newspaper said the next day that, generally, the cause of the fire remained a matter of conjecture. The report added, however, that

the more generally prevalent opinion of those employed about the buildings seemed to be that it took from the friction of the elevators, which theory is somewhat strengthened by the locality at which the fire burst out. Suggestions have been made that the fire was the work of incendiaries, but that opinion is not general nor is it materially substantiated by the facts.

Van Arman later contended for the company that this report to the press had been deliberately falsified and that the depot hands knew full well that the fire was incendiary in origin, the contrary opinion having been circulated in order to allay the suspicion of the criminals. This stratagem may explain, too, the failure of Superintendent Brooks publicly to offer a reward for the apprehension of those who burned the depot. The feeling will not down, nevertheless, that the fire may have been an accident and was considered such by the railroad officials until some months later when

a new recruit to the staff of spies produced evidence to the contrary.<sup>47</sup>

At any rate, Clark's investigations for several months after the fire do not seem to have yielded any information on the origins of the holocaust. Then, in January, 1851, he was put in touch with Henry Phelps, hired him as a secret agent for the railroad, and in the next two months was supplied with enough evidence to link Fitch and his friends with the burning of the depot in Detroit.

Phelps was a man of high intelligence, clever to the point of cunning, who was reduced to living by his wits. He had come to Michigan from New York in 1836 at the age of twenty-two with his family. He worked on the family farm in Oakland County near Detroit and then in his brother's distillery. He struck out on his own in 1840 when he went to Michigan Centre and rented a distillery. This venture failed after six months when a draft he had offered to cover the rent proved to be worthless. A second attempt to go into business nearer home also failed. He then moved to Sharon, west of Ann Arbor, took up farming, and to supplement his income, pettifogged in the local justice courts. He also dabbled in politics, served as town clerk, and won a commission as captain of dragoons in the state militia. This budding career was nipped in 1844 when he was tried for horse-stealing and sentenced to five years in the state prison in Jackson. Pardoned in April, 1849, six months before his term expired, he returned to his farm, and after a profitless year or more, went to work in December, 1850 as a stool pigeon for the United States District Attorney for Michigan, George C. Bates. Phelps' task, at \$1.25 per day plus expenses, was to bring to book the numerous counterfeiters who plagued this wild west of the 1850's with their bogus coin. His good working knowledge of the law from both sides of the fence, combined with an unscrupulous boldness in digging up evidence, soon won him the confidence of his employer.

Not long after he had begun to work for Bates, Phelps reported that he had established contact with the leader of a big counterfeiting ring in Jackson County, Abel F. Fitch of Michigan Centre. He further revealed that in the course of his association with Fitch, he had learned of the latter's connection with the burning of the freight depot in Detroit. Bates undoubtedly relayed this information to the railroad officials, and Phelps' promotion to Clark's

corps of secret agents with a salary of forty dollars a month followed almost immediately.

In his new capacity, Phelps went to the Centre to follow up the lead he had uncovered as a federal informer. He spent as much time as he could at Filley's tavern renewing acquaintances and worming his way into the confidence of its patrons. He made a special effort to be with Fitch and talk to him, pretending that he wished to buy his prize twin oxen, and dogging his footsteps at Michigan Centre as well as in Lansing and Detroit. In a short time, Phelps was able to report to Clark that he knew who had burned the freight depot. It was an old friend of his, George Washington Gay, of Detroit, once known as the "Whig Bully of City Hall," possessor of a long police record, and now the proprietor of a brothel in the lower city. Gay had admitted to him, Phelps, that he had set fire to the depot and that he had been hired by Fitch and his friends to do it. The latter had also furnished Gay with the "match" that ignited the building. This match was an ingenious machine, a cylindrical block of wood with holes bored lengthwise and transversely and filled with cotton and camphene (a turpentine derivative then used as an illuminant), which would burn slowly for several hours and then flare up into a blaze. Gay had admitted that he had received the match from someone at Michigan Centre, ignited it and secretly placed it in the cupola of the freight house about eight o'clock on the evening of November 18. The match had flared up about two o'clock the morning of the nineteenth and the resulting fire had destroyed the building and its contents. For his work, Gay said he had received \$150, which sum had been made up by Fitch, Filley, Corwin, Williams, and others at the Centre. The latter, according to Phelps, had also admitted to him their participation in the crime substantially as related by Gay and had even boasted of how much each had contributed to the purse of arson.

If Clark and his legal adviser, Van Arman, were amazed at these revelations, Phelps was prepared to prove them fully. He invited his employers to visit Gay's brothel and see and hear for themselves. Accordingly, early in April, 1851, the two visited Gay several times in Phelps' company, disguising themselves in rough dress and posing as fellow criminals. To win Gay's confidence, they boasted of their past exploits, flashed counterfeit bills, and said they were

interested in working out a scheme to free Old Sile Doty, the famous criminal, who was then serving a long sentence in the Hillsdale jail. In the course of the conversation, Gay freely admitted that he had burned the depot in November and told just how much he had been paid and who had paid him. Gay also allowed his two new friends to see the match he had in an upstairs room, similar to the one he had used in the old depot and which he was going to use to burn the new one which had been built on the same site. He assured them that he could make more money by burning depots on the railroad than any other way and could get \$50 more from Fitch and his friends for burning the new depot than he had received for the old one. After agreeing upon some future criminal ventures, Clark and Van Arman left with Phelps, fully satisfied that their agent was telling the truth and had given them the means to break up the conspiracy at the Centre.

Phelps clinched the case against Fitch and company when he informed Clark that they planned to burn the depot at Niles and had asked him, Phelps, to do it. They had offered to supply him with a match and pay him \$200 for the job. When he had balked at the risks involved, they had assured him that the match had worked perfectly in Detroit, and that if he were caught, they could easily swear him clear. Phelps then, with the full knowledge of his railroad superiors, agreed after some delay to carry out the task, and set the time. Clark arranged for another agent to be at Filley's tavern on the appointed night when Phelps was to be "fixed out" for the trip to Niles.

The night of April 11, 1851, Phelps went to the tavern at the Centre. He had with him Heman Lake, a contemporary inmate of the state prison, whom he had persuaded Clark to hire as his assistant and who had fully corroborated all of his reports. After some general talk, Bill Corwin went to a small room in the tavern, unlocked it, and brought out a box with the match in it, and then carried it outside to Phelps' waiting buggy. Falkner, the railroad agent who was present all the time, and had been told to watch for the delivery of a box to Phelps, confirmed all that the latter reported. He had heard only snatches of the conversation between Phelps and Fitch and the others, but had seen Corwin take the box out and put it in the buggy.

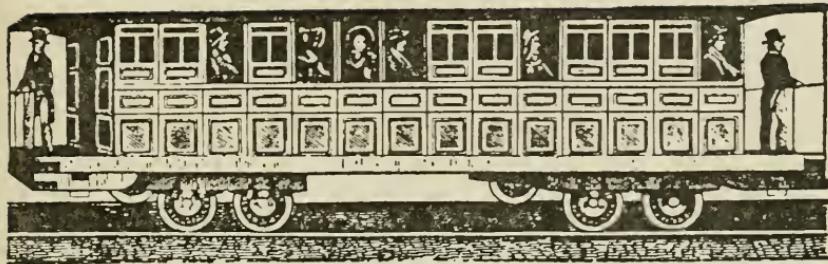
Leaving the tavern, Phelps and Lake drove to Grass Lake where

they showed the box and the match to Clark and then started off for Niles. There, Phelps placed the ignited match in the depot, and the railroad men, fully aware of the plot, hastened to extinguish it before any harm was done.

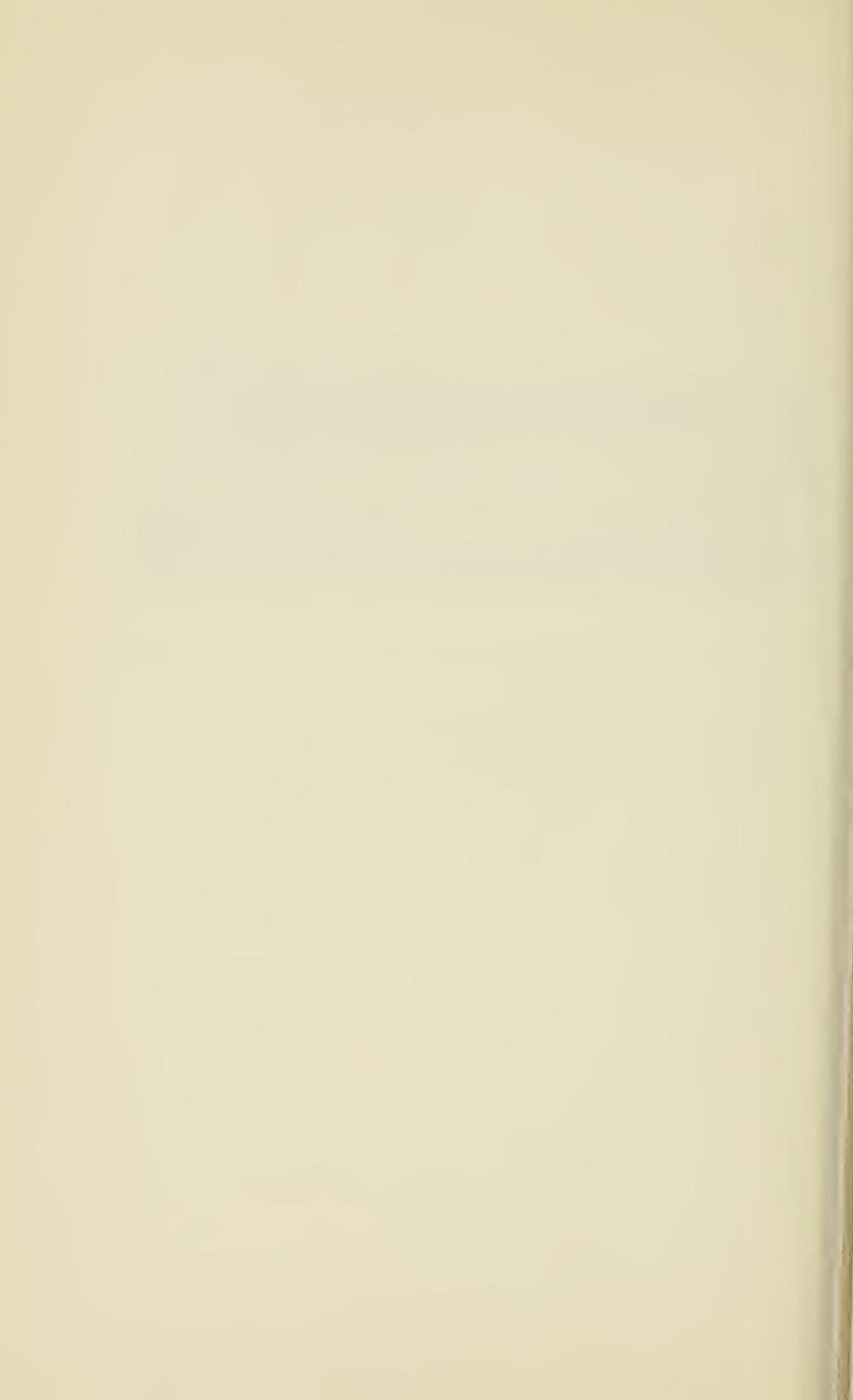
Clark was now ready to act. Phelps had proved to his satisfaction that Gay had burned the Detroit depot, that Fitch and others had hired Gay to burn the depot, and that he, Phelps himself, had been hired to burn the Niles depot in a similar manner. Back in February, Clark had reported to Brooks that "the burning of the building [would] be proven beyond a doubt." He was now more than ever certain of his ground. And when he had seen Fitch in March lobbying in Lansing, he could not help gloating: "I think [Fitch] had better save his strength as he has a good deal of labor to do for the state within the next five or ten years without going so far from home. If this does not prove so I am no prophet." Once the Niles trap had been sprung and all the accumulated evidence carefully prepared, Clark was ready to move and make the arrests.<sup>48</sup>



*PART*



*TWO*



BY APRIL 19, 1851, four months to the day after the depot fire, all the arrangements for the roundup of the railroad's enemies were completed. A warrant was issued on the complaint of Phelps for the arrest of forty-four men, charging them with the burning of the depot as part of a general conspiracy to destroy the property of the Michigan Central Railroad and with a number of other crimes. The list of accused included Fitch, Burnett, Filley, and almost two score of their friends, anybody in Michigan Centre or Jackson, apparently, who had ever expressed any hostility to the railroad. Also named in the warrant were George W. Gay and his Detroit accomplice, Erastus Smith, as well as a number of known counterfeiters whose inclusion lent substance to the allegations of general villainy. On the afternoon of April 19, one special train started from Niles for Jackson with the sheriff of Berrien County and his deputies aboard, while another left from Detroit and headed westward carrying the sheriff of Wayne County and about a hundred deputized railroad hands. As the trains passed through the disaffected areas a little after midnight, squads of three or four officers were dispatched at intervals, each to get its man. The two trains met near Jackson and waited for the haul. The Wayne County sheriff accompanied by Clark and Van Arman brought in the prize prisoner, Fitch himself. In three hours more than thirty others were routed out of bed and brought aboard. Day had already broken when the trains started on the slow journey back to Detroit with the triumphant posse and its bewildered prey.<sup>49</sup>

Late Saturday afternoon, the prisoners were marched from the cars through the city streets to the jail in a long column of twos, each man guarded by a deputy. Fitch, at the head of the column, was struck by the wry humor of the scene.

I being a captain [in the militia] they placed me in front, of course, and we made quite an imposing appearance giving the Detroit folks a good opportunity to take a fair view of us. It looks like a Connecticut general training and must have been great satisfaction to the RR folks.

In jail, the small mob joined Gay and Smith, who had been ar-

rested in the city that morning. Burnett, who had not been at home when the posse called, hearing that there was a warrant out for his arrest, took a train to Detroit and gave himself up to join his friends in jail. In the course of the next week, additional prisoners were brought in from Jackson, Niles, and elsewhere.<sup>50</sup>

The law began to move with illegal haste. None of the prisoners was brought for examination before the police justice who had issued the warrant, as required by law. After they were in jail, the grand jury was hurriedly convened, without the required six days notice, and returned five joint bills of indictment against the accused. The first indictment, under which they were later tried, charged them all with burning the depot and specified that Gay had actually set the fire and had been hired by the others to commit the crime. The railroad's officials, at the same time, brought civil suit against the prisoners for \$150,000 damages and had them held in \$50,000 bail each. In time, they were also indicted in Berrien and Calhoun counties for conspiring to burn the depots in Niles and Marshall, and finally, by a Federal grand jury for counterfeiting and for burning the United States mails.<sup>51</sup>

Staggering under this massed legal assault, the prisoners were arraigned before Judge Benjamin F. H. Witherell in Wayne County Court on April 29. They pleaded not guilty to all the indictments. The prosecution announced that it was ready to go to trial on the first indictment and wished to do so quickly. Counsel for the defense, after vain attempts to have the indictments quashed and a mistrial called on technical grounds, held out for a month's delay. When the court refused to grant this motion, the defendants took advantage of their legal option and elected to be tried in the circuit court, which would not sit for two weeks.<sup>52</sup>

Primarily, the defendants desperately sought delay to slow down the judicial mills which were surely grinding them to their doom in jail. Their counsel, neither able nor distinguished, needed time to prepare the case, seek out witnesses, study the evidence, and work out the defense. Representing the accused in court that day were Nehemiah H. Joy of Jackson, and Henry Frink, but lately removed to Chicago from Jackson, two village lawyers who had come forward to help their friends in need. They were aided by Henry H. Wells and William A. Cook, two Detroit lawyers of no great reputation at the bar. Another obscure Detroit lawyer, L. H.

Hewitt, appeared for Gay and Smith. Opposing them was a battery of the city's legal lights who had been retained by the Michigan Central to assist David Stuart, the county prosecuting attorney. On behalf of the people, Stuart was joined by James F. Joy and John Van Arman and such outstanding members of the Detroit bar as James A. Van Dyke, Jacob M. Howard, Alexander D. Frazer, Daniel Goodwin, and William Gray. Other lawyers of reputation were, moreover, interdicted by the hostility of public opinion from taking the case of the "conspirators"; only one of them, William A. Howard, showed his independence and volunteered his services to the defendants, justifying his action by explaining that "there was more real danger to the community from allowing a heartless monied corporation to crush at their will any number of men in the manner pursued than by any depredations of the prisoners." For his act, Howard was charged with treason to law and order and the welfare of the people among whom he lived. His gesture was more spirited than effective, for he was noted as a good business counsellor rather than as a trial lawyer.<sup>53</sup>

The case was called up for trial on May 14 before Judge Warner Wing in the Wayne County Circuit Court. The defense continued to spar desperately for time, fearful of the massed power of the state and its wealthiest corporation. Fitch, undoubtedly the main-spring of defense strategy, vowed he would not be forced to trial until he was fully prepared. First, his lawyers filed a motion for separate trials for him and four other defendants, a stratagem of delay and obstruction. Then, on behalf of Fitch alone, a motion was made for a change of venue to a neighboring county on the ground that the public had been so prejudiced against the defendants that a fair trial in Detroit was impossible. In support, counsel submitted affidavits containing extracts from the three Detroit daily newspapers. Judge Wing denied this motion on the technical ground that if Fitch were tried in another county under this indictment, the rest of the defendants could never be tried, as there was no provision for the return of the indictment to Wayne County. The next day, the defense filed a new motion for a continuance to the November term of court so that three absent witnesses could be procured. When the prosecution showed that this request was unreasonable and factitious, the judge denied it, but relented enough to grant an adjournment until May 28.<sup>54</sup>

Meanwhile, the case was being tried in the court of public opinion, to the great detriment of the accused. From the moment of the triumphal procession through the streets and the first press reports of the mass arrests, great excitement gripped the city. One of Fitch's close friends barely escaped a drubbing in a public bar when he defended the prisoners against vicious abuse. The newspapers played on the fears of the people. They accepted the charges as true and proven and added a few of their own. In reporting the arrests, they alluded to the "gang of desperadoes" and hinted darkly at the existence of a diabolical criminal organization operating in several states and possessed of an infernal machine for blowing up trains. The *Advertiser* added blackmail to the official charges and referred to Jackson County as the home of drunks, counterfeiters, and other criminals. The *Free Press* maintained a correct attitude for more than a month, but then attacked the defendants as an "organized band of desperadoes—congregated around a drunken rum-hole in Jackson County." When the indictments were issued, the *Tribune* called for suspended judgment and went on to print a story, probably supplied by one of the railroad's spies, of a secret meeting of the "gang of ruffians" to auction off Wescott's life to the highest bidder—all of which proved "the depths to which [the accused] were ready to sink themselves in crime and depravity." Assuring its readers that the prisoners could expect full justice in Wayne County and that it would not even publish the indictment lest it create prejudice, the *Daily Tribune* pilloried the defendants as "a lawless gang of monsters in human shape" and called on Mayor Zachariah Chandler to provide the city with additional police protection against the dangers threatened by those of the criminals still at large. It gave prominence to reports of fires in different parts of the city and cautioned the police to be on the alert against the incendiaries. Finally, it revealed for the benefit of the public, which it counseled to withhold judgment, that the accused had a long history of criminal activity and that Fitch in particular had long meditated lawless vengeance against the railroad.<sup>55</sup>

Other newspapers in the state and elsewhere, took up the hue and cry and descended with horror on what they regarded "as evidence of the universal demoralization in Michigan; and demanded immediate punishment of the accused" as well as the

restoration of capital punishment in the state. The press alarm moved one terror-stricken Presbyterian clergyman in New York City to claim that he and other passengers had had their drinking water poisoned while traveling through the state on the Michigan Central Railroad.<sup>56</sup>

Fitch protested this campaign of calumny to one of the *Free Press* reporters who visited him in jail but apparently to no effect. "Such false and wicked statements," he wrote his wife, "as was published in the newspapers is enough to craze anyone." Burnett struck back in a long letter to the *Ypsilanti Sentinel*, which the editor printed with the explanation that "as a portion of the press has been very free, to say the least, in pronouncing judgment in the case," common justice dictated that the other side be given a hearing. Writing from jail, Burnett gave his story of the highhanded proceedings and protested against the "unwarrantable statements [that] have been made . . . concerning us, contrary to the just rights of free-men." The *Jackson American Citizen* reprinted Burnett's letter and editorially commented on the extravagant tone of the Detroit and eastern newspapers, whose published disclosures it felt, "have proved too much for the gullibility of any acquainted with the matter."<sup>57</sup>

In time, the excitement died down as the press showed proper restraint in reporting the trial. But irreparable harm had been done the cause of the defendants. They had been branded as criminals who had wished to destroy "our young and beauteous city" and the presumption of their guilt had been fixed in the minds of the citizens. The effects of the public hysteria had been compounded when the city fathers, responding to the fearful agitation, had called out a large night watch to protect the city from destruction by fire and assigned additional guards to each business block. Echoes of the civic "great fear" had resounded in Federal Judge Ross Wilkins' charge to the grand jury of the United States District Court: the judge, in presenting the case against the alleged counterfeiters including Fitch, Filley, and six of their friends, pointedly referred to that "malignant spirit" and "depravity of heart" of these enemies of society. The officials of the Michigan Central, taking advantage of the excitement and adding to it in their own way, put a twenty-four hour guard in and around the county jail at their own expense. Fitch thought they did this merely

"to make a great display." This action seemed to him, besides, a vicious and unfair form of harassment. He protested,

And now how in the name of common sense can we ever prepare for trial that is a fair and impartial one when all such we say or do is carried to our enemies and they allowed to use it as they please, besides it seems to me an unheard of procedure that a party complainant should have persons arrested at their instigation and then treat them in such an insolent manner as they do us.<sup>58</sup>

When court convened again on May 28, William A. Howard announced that he had been east and had retained Senator William H. Seward of New York for the defense. He himself and Cook, Howard explained, had been ill and unable to take hold of the case properly. Howard did not, however, touch on the decisive reason for procuring more eminent counsel. Undoubtedly, it was Fitch's determination to get the very best lawyers to defend himself and his friends and oppose the legal array of the prosecution. He had been depressed by the way things had been going for the defendants, reviled everywhere, stymied in court again and again, and confined in jail without bail. And while he believed Frink and the others were doing the best they could, he strongly felt, as he wrote his wife, that "we have a hard enemy to fight" and need "to get good counsel." It was not strange that in his plight he should turn to Seward for succor. The senator had but recently uttered his "higher law" sentiments and become the idol of the antislavery people everywhere. The repute of his efforts as a criminal lawyer on behalf of the lowly could not have been lost on the astute Fitch. Seward, appealed to in the name of the common man against a powerful corporation which had bought up the best legal talent in the state, and offered on Fitch's behalf a fee of \$2,000, agreed to come west and take the case. Attempts by influential eastern friends of the railroad to dissuade him failed, for he believed that as an American lawyer, he had to assist those who most needed assistance. When word came to Fitch that Seward had agreed to come to Detroit and take the case, his spirits rose greatly. He assured his wife, and himself, "He is a big gun no mistake."<sup>59</sup>

Unfortunately, Seward could not arrange his affairs to arrive in Detroit until June 5. Would the court, pleaded Howard, postpone the case until then, particularly since the defendants now withdrew their requests for separate trials. Judge Wing refused to grant the

postponement without good legal reason. Opposing counsel, however, finally did agree to a compromise, whereby the defendants would be tried jointly, a jury would be empaneled, two or three witnesses examined on a specific point, and then the case allowed to rest until Seward's arrival.

The trial got under way the next day, May 29. The number of defendants had been reduced to thirty-seven; some had been discharged for lack of evidence, some not arrested for the same reason, and one had died in jail. The deceased was none other than Gay, who was charged with burning the depot at the behest of the others. He had died on May 8 of what Fitch described as a "loathsome and disgusting" disease. When the officials accused one of the prisoners, who was a doctor by profession, of poisoning Gay, a charge soon dispelled by a post-mortem, Fitch winced as though lashed.<sup>60</sup>

First, a jury was chosen in short order. The twelve men, selected from a panel of names taken from the tax assessment rolls of the city, were representative of the substantial and respectable portion of the community. They included such outstanding political and business figures as Levi Cook, Horace Hallock, Alexander C. McGraw, Buckminster Wight, and Silas A. Bagg. The others on the jury were relatively unknown, but most had served as minor municipal functionaries. Fitch thought it was a "good jury" and did not consider the possibility that it might be swayed by the civic interests so closely bound up with those of the city's great commercial outlet, the Michigan Central Railroad.<sup>61</sup>

Van Arman then opened the case for the prosecution. He said the state would prove that Gay had burned the depot and that the defendants had paid him \$150 to do it and furnished the "match." Henry Phelps was the first witness called and told how Gay had confessed his crime to him and incriminated the men from Michigan Centre. Darius Clark and Van Arman then took the stand in turn and told of their visits to Gay's house, where the latter had repeated his confessions, thus substantiating Phelps' testimony in this respect. After hearing these witnesses, the court adjourned, as agreed, for one week until June 5.

All this while, the defendants were languishing in the crowded Wayne County jail, spied on by the railroad guards, prevented from taking any effective action in their own defense, fearful and

hopeful by turns of the outcome. Fitch, in particular, was subject to these emotional fluctuations, as may be clearly seen in a series of letters he wrote his wife, Amanda, from jail. His first reaction to arrest and imprisonment was one of incredulity and indignation buoyed by hope. The day after his arrival in jail, he wrote, almost lightly, "This is the first time I ever addressed you from such a place and I hope to God it will be the last." The next day, he was somewhat chagrined at having to write from the same place, but repeatedly asserted his innocence and assured his wife: "We know that the truth is mighty and believe will prevale, RR influence and money to the contrary notwithstanding . . . We shall all of us be delivered in due time unharmed from the hands of our enimies, false swearing bribery and corruption to the contrary notwithstanding." He and his fellow prisoners felt "injured and abused, insulted and wronged" but were quite sure that all would end well. "I feel to (sic) indignant to feel meloncholly," he concluded his second letter from jail, "I shall be home before long." All the same, he was bewildered by the vindictiveness of the railroad officials, though he was inclined to think that they were deceived by Phelps, Wescott, and the other spies, "who gather round them for the purpose of getting their money and they care not how." He vented his spleen against these spies, accusing them of concocting a monstrous plot. "When they found they could not draw me by any pretext what ever in to any of their scheems," he explained, "they finally pitched upon this depot scheem made by themselves so far as I am concerned out of whole clothe and now seek to convict me and others." But, he was sure, they "will be worse confounded than those who undertook to build the tower of babel," and called "Divine vengeance" down upon them.<sup>62</sup>

After two weeks of uninterrupted confinement, of writhing under the lash of public condemnation, the note of defiant hope began to fade. Fitch now found his quarters "very uncomfortable" and began to worry about his health and what would happen to him if he came down with his old stomach ailment. He was soon writing, "It does not seem as though I could stand it here much longer." Gloomily expecting the worst, he told Amanda that he would send for her if he had an attack, as he did not think he could live through one without her "kind attention." He had been so much troubled with "Dispepshi," he was afraid he could not sur-

vive long with the best of care, and after a month in jail, concluded hopelessly that "no man can long enjoy health in this uncomfortable place."<sup>63</sup>

Gloom deepened into despair as he felt the full force of legal pressure and hatred. Only occasional flashes of desperate hope lit-up the murk of his cell and then were followed by a sense of martyrdom. On May 11, he reflected sadly, "I have always been taught that money is power but I never felt it so sensibly as I do now." Three days later, he cried out to Amanda,

I am still in jail and how long I am to be kept here I know not, but if nothing but the pound of flesh nearest my heart will satisfy my enemies and they seem to be determined not to be satisfied with anything less, I dont know but with their power and influence they will compell me to yeald it to them . . . I fear that many of us will be obliged to sacrifice our lives to appease the wrath of this soulless corporation.

In another two weeks, Fitch was prepared for martyrdom. He could not understand how innocence could be so wronged, but "if they can with all their cunning devise such damnable scheems and carry them through and convict us, why it is time that their power was known and guarded against, for no mans liberty is safe." And then, in a sentimental vision, he returned to his dear Amanda, his companion of twenty years.

This is a fine May morning and although my boddy is surrounded by bars and bolts yet my spirit, thank God, is left free to roam and hold sweet communion with those I hold near and dear here on earth, and were I permitted to be with you and sis in person as heretofore to take strawberry walks and roam over fields and landscape, as we were wont to do at this delightful season, what untold pleasures might we not injoy. But this may be ordered for some wise purpose, for God in his providence does all things well, we should not know how to appreciate and injoy happiness did we not occasionally taste of misery.<sup>64</sup>

Above all, Fitch fumed because he and his friends could not get free on bail. Efforts to do so ran up against the negligence of court officials and the huge sums set at the behest of railroad counsel. The good citizens of Detroit and perhaps even the railroad officials really feared to let the criminals described by their newspapers loose in their midst. Fitch raged helplessly as week passed week in crippling confinement. He wanted to go home and organize his defense. He knew he could raise any reasonable amount of bail. Indignant and bewildered, he could not understand why the rail-

road showed such a "fiendish disposition" toward him and accused the authorities of lacking one spark of humanity and trampling "on all laws, constitutions and justice." He was soon convinced that they fully intended to keep him from preparing adequately for the trial, "that our enemies would be glad to keep us here until our enigies were all impaired or weakened so that we would fall an easy prey." Finally, as June 5 and Seward's arrival neared, and Judge Wing announced he would set bail for the criminal proceedings, Fitch took heart. He asked Amanda to tell his friends to come to Detroit to stand bail for him. He explained somewhat optimistically that "they feel ashamed to think that they have acted so heretofore" and openly expressed his fears, now happily dissipated, that if he had had to be in court days and in jail nights, it would have killed him. He was sure his bail would not be set very high because public opinion had changed in his favor. He noted that King Strang's Mormons had been arrested for treason and that their bail had been set at only \$2,000 each. His own bail would, of course, be higher, "so you see that treason against the RR is a much greater crime than treason against the government." But, he was certain, "the day of retributive justice is at hand. This company will yet learn that they cannot trample upon the dearest rights of Freemen without bringing down on their heads retributive justice."<sup>65</sup>

Fitch was wrong. On the resumption of the trial on June 5, with Seward leading the defense, he soon found out how wrong he was. Without delay, Frink requested that bail be set for Fitch and Burnett. Prosecuting Attorney Stuart demanded that the amount of bail be fixed at \$15,000 for the indictment being tried and half as much in each of the four other indictments, a total of \$45,000 for each defendant. Frink's objections that these amounts were excessive were brushed aside. The prosecution dwelt on the enormity of the offenses charged and threw up to the defendants their boasts that they could give bail in the sum of \$100,000, if necessary. Here, Seward, speaking for the first time, said that although he knew little of the merits of the case, he considered the amounts requested excessive, and vehemently declared that if he were the defendants, "he would rot in jail . . . before he would submit to such persecution and oppression." Counsel for the state then explained with amazing frankness that bail was deliberately

set high to prevent the prisoners from being bailed at all, for if one of them absconded, the whole trial would be halted and all proceedings would be voided. The railroad officials, it seems, had at last got their hands on their enemies and were not going to release them even for a moment on a legal nicety until they had all been duly disposed of. As Stuart declared, "There were insuperable objections to allowing bail" at all, for the prisoners were liable to be arrested under the other indictments and taken to another county to be tried. Seward in turn insisted on the constitutional rights of his clients: "This was a court of justice and . . . these defendants were prisoners at the bar and . . . the constitution of the country was not a fiction . . ." The prisoners were entitled to reasonable bail and \$45,000 for each of thirty-seven defendants, or a total of nearly two million dollars, was plainly exorbitant. After further argument, during which Seward called the attention of the court to the higher law, "a proper sense of its obligations to God and humanity, and love of liberty for the oppressed under all circumstances," Judge Wing announced his compromise figure—\$20,000 for Fitch and \$10,000 for Burnett. The sureties for each, friends and neighbors from Jackson County, then stepped forward and answered as to their ability to stand bail.

The prisoners were not however to be released. Stuart reminded the court that they were also being held in \$50,000 bail in the civil suit of the company against them for damages. The defense tried to have the writs by which they were held in the civil suit quashed in open court, but to no avail. And except for brief interludes for selected defendants, the prisoners were to remain in jail during the whole length of the trial, "held fast," as Seward later put it, "as in a cage of iron."<sup>66</sup>

With the matter of bail disposed of, the trial really got under way. For three months, through the blazing heat of a midwest summer, the court heard the testimony of nearly five hundred witnesses. Judge Wing's minutes of the evidence covered five hundred ten closely written pages of legal foolscap and the printed report of the testimony fills more than five hundred fifty octavo pages in small type. It had been expected that the trial would be over in a few days, but by the end of June, all were resigned to a long-drawn battle. When one of the witnesses was asked if he knew when the case had begun, Judge Wing sardonically interjected, "Can you

tell when it will end?" and laughter greeted the sally. By the middle of July, there were demands for longer sessions. The prosecution suggested evening sessions and the jury asked that proceedings begin an hour earlier in the morning. The judge did nothing, but declared the matter was a serious one and impressed counsel with the necessity "of urging this trial through to an ending."

It was not until September 2 that the parade of witnesses came to a halt. Each side had taken more than a month to present its case, and the prosecution then had called additional witnesses in rebuttal. Of the elapsed time, however, only some forty-seven days had been used in the actual taking of testimony. At least one month had been wasted when one or another of the defendants and jurors was stricken by disease in that stifling summer heat and could not make an appearance in court. At first, opposing counsel had agreed to let the proceedings continue without prejudice to either side. But by the end of July, the defense lawyers, stung by repeated adverse decisions of the court, stubbornly refused to enter into any further stipulations to waive their clients' rights. Court had therefore to adjourn from day to day until the absent defendant or juror was able to return. Almost two weeks were thus lost at the end of July when two of the prisoners came down with diarrhea, and two more in August when two others succumbed to the heat and filth of the crowded jail and died of dysentery. The long delays wearied the survivors and frayed the professional courtroom courtesy of the lawyers, who began snapping at each other in their heated legal wrangles. Not until September 4 did counsel begin their closing arguments to the jury and then for three weeks matched the heat of Indian summer with their perfervid oratory. These addresses were concluded on September 25 when the case went to the jury—an issue welcomed by the judge on behalf of all with joyous relief.

The prosecution in presenting its case first established the *corpus delicti*, namely, that a crime had been committed, that the depot fire had not been an accident but had been deliberately set. Several witnesses, most of them employees of the railroad company, stated that the fire could not have resulted from the overheating of the machinery used to elevate wheat and other freight to storage bins on the second story. They also declared that they had first seen the flames in the cupola of the building, high above the stored freight,

where Gay was alleged to have secreted the ignited "match." The cross-examination of these witnesses by the defense brought out the possible accidental causes of the fire, particularly the fact that work in the depot continued until midnight and that ordinary tallow candles in sconces fixed to posts throughout the building and over the wooden storage bins had been used for illumination. Seward and Frink insisted that the *corpus delicti* had not been proven by any means.

The prosecution then brought its secret agents and informers to the stand to describe the hostility of the defendants to the company, their secret meetings in Filley's tavern, and their criminal attacks on railroad property in Jackson County. The defense immediately offered strong objections to the admission of such evidence. Frink argued that the indictment was for a single offense and that the state could not seek to prove other offenses or go beyond proof of the agreement to hire Gay to burn the depot. Van Dyke, in reply, admitted that the indictment before the court was for the single offense of burning the depot in Detroit, but asserted that it was proper to introduce evidence tending to show the existence of a conspiracy generally to destroy the property of the railroad and embracing within it the design to burn the depot as charged. The crimes in Jackson County, he explained, were part of a grand scheme culminating in arson in Detroit. Seward countered by insisting that the defendants were being tried for one crime and one crime only, not for conspiracy, or treason, or larceny, but for arson; because they may have committed other crimes elsewhere and at other times did not prove that they burned the depot. After hearing both sides argue at length, Judge Wing decided in favor of the prosecution, ruling as admissible the testimony to prove all acts done under the general combination against the railroad. He did not think the introduction of such evidence would prejudice the defendants' case. As he later explained to the jury, the evidence thus received was not for the purpose of showing the defendants capable of committing the crime as charged; as such, it was inadmissible and irrelevant. "It was admitted," he made clear, "to show the original combination between the defendants, having in view the ultimate, though contingent, burning of the depot at Detroit; to show that as defendants were still working out their original plan, they had not abandoned it up to the period when the

depot was burned, and thus show—or raise a presumption—that their scheme was in full force when the depot was burned.” That the jury of laymen could always appreciate the legal distinction and not allow themselves to be impressed by the guilt of the defendants in committing crimes in another jurisdiction for which they were not being tried was open to question. And the lawyers for the defense continued to take exception to the ruling of the court admitting such and similar evidence.

The prosecution had, without doubt, won an important victory: all the evidence so carefully gathered by Clark and his agents for many months in Jackson County could now be used against the defendants. Witnesses were paraded before the court who detailed every expression of hostility, pointed or implicit, uttered by the defendants, drunk or sober, against the railroad and its policies. Every mishap along the line of the road between Grass Lake and Jackson was minutely recounted and by imputation fastened on the “conspirators.” The meetings at Filley’s tavern were blown up into “secret conclaves” of a deep conspiratorial nature. The witnesses emphasized the strong mutual loyalty of the defendants, their repeated boasts of how they would stand by each other and swear each other clear if any fell afoul of the law. And guiding them all, encouraging all, the state contended, was Fitch, shrewd and unscrupulous, hating the railroad and Brooks, and using his friends in his own personal war with the monster corporation, while he kept his own hands clean.

On cross-examination, the defense pointedly brought out the casual and public nature of the meetings in a tavern open to all. It tried to discredit those witnesses who were in the pay of the company by suggesting that their motives were mercenary and that their wages were dependent on their providing the desired information. Some of the witnesses were also brought to admit that they had sometimes been accomplices and participants in attacks on railroad property.

Wescott was one of the key witnesses for the prosecution. Under the skillful guidance of Van Arman, he related what he had heard and seen during the four months he had been at Michigan Centre as a spy. He underlined the testimony of previous witnesses about the determination and cohesion of the defendants in their hostility to the railroad. They had said many times in his presence, “Yes, we

are banded together and will stick together," and, "So long as we stick together all hell can't convict us." He told of his intimacy with Fitch and how the latter had confided in him and told him of the exploits of the boys at the Centre. He clearly pictured Fitch as the mastermind of the conspiracy, who with Filley had actually paid off the boys for each criminal task assigned. Wescott carried the state's case a great step forward by telling how Fitch had revealed to him his plan to climax the attacks on the railroad by burning the depots at Detroit, Ann Arbor, Jackson, and Niles, offering \$1,000 to anyone who would burn all four, or \$250 for any one of them. Fitch, he said, had actually tried to get him to burn the Detroit depot. Conspiracy, motives, methods, intent—Wescott happily supplied all the ingredients necessary for a conviction. He also for the first time linked Fitch with Gay and told how in disguise, he had trailed Fitch and Joe Dows, a notorious criminal, to Gay's house in Detroit in February, 1851.

Frink and Seward could not shake Wescott's testimony on cross-examination. All they could do was to try and impeach his credibility by bringing out that he had once been indicted for forgery and again by suggesting that he had a direct financial stake in the case, that he expected a \$1,000 reward if the defendants were convicted by his testimony.

The star witness for the prosecution was, of course, Henry Phelps. For a day and a half, under Van Arman's questioning, he cleverly and coolly wove a net of guilt around the defendants. He brought home the crime of arson to them. He revealed how they had hired him to burn the depot in Niles and "fixed him out" for the expedition in arson on the night of April 11, 1851, at Filley's tavern. They had supplied him that night with a "match" similar to the one they had given Gay to burn the depot in Detroit. Fitch, Filley, Price, Corwin, Williams, and Freeland had severally admitted to him that they had contributed to the purse raised for Gay. Gay on his part had confessed to him, Phelps, that he had been furnished the match by the men from the Centre and that on the night of the fire he had placed the ignited match in the cupola of the depot and that the boys had paid him for the job. Phelps further confirmed by personal knowledge that Fitch had been acquainted with Gay.

Phelps was subjected to a severe probing cross-examination by

Frink and Seward for another day and a half. They tried in vain to get him to contradict himself, for he stuck to his story and parried all thrusts with great finesse. Defense counsel had to resort again to bringing out the details of his unsavory past, his business defaults, and his five year term in the state prison for horse-stealing. They impugned Phelps' motives by trying to show that he hated Fitch and wished to take revenge on him, but the witness denied any such feelings and insisted that Fitch had been one of his best friends. Phelps denied any and all villainies that the defense imputed to him.

Following Phelps on the stand, Heman Lake confirmed substantially all the testimony of his mentor. When counsel tried to impeach his character, they incidentally revealed the main lines of the defense and offered too an amusing little byplay. Frink asked Lake where he had been lodging during the trial. Lake answered that he had boarded with Wescott most of the time he had been in Detroit but had also spent some time at the home of Gay's widow. When Frink followed this up by asking whether he had slept at the brothel, Stuart objected for the prosecution that the question was immaterial. Seward contended that the question was very much to the point, inasmuch as Lake was one of the state's chief witnesses and the defense was entitled to investigate him thoroughly. He added that his clients were charged with conspiracy, but he intended to prove that they were themselves the victims of a conspiracy hatched by Phelps, Lake, and others in Gay's house; it was highly important, therefore, to show the conduct of one of the principals in such an atrocious plot. Van Dyke then pointed out that Lake had the privilege of refusing to answer the question if his reply tended to incriminate or degrade him. The judge upheld the point and Lake accordingly refused to answer. He was then asked: "Have you not since the death of Gay been in the constant practice of sleeping with the widow Gay?" Again the question was objected to on the ground that it involved a crime and could not be asked any more than a witness could be asked if he had committed a murder. The court again upheld the objection and Lake did not answer.

He did admit under further questioning, however, that he had taken Mrs. Gay to Marshall and then to Royal Oak to keep her from being called as a witness for the defense. Prosecuting Attorney

Stuart later admitted that Lake had done so at his suggestion. He explained that some of the lawyers for the defense had been "in the nightly practice of visiting and making improper approaches to this woman" and hoped to get her to testify for them, and that the prosecution therefore had taken measures to protect her from defense counsel so that "she might not be induced to become a witness in this case for the purpose of defeating the ends of public justice." Lake accordingly had been instructed to escort Mrs. Gay out of town.

Strangely enough, the defense did not then rise to object to the ethics of the prosecution in spiriting away such a material witness. Seward resented, rather, the implication that he, as one of the lawyers for the defendants, had been the one who had frequently visited Mrs. Gay at the bawdy house. Van Dyke said he would freely exonerate Mr. Seward from the charge. William A. Howard also proclaimed his innocence. Hewitt finally came out and admitted that he was the lawyer referred to, but assured the court that he had visited the widow purely in a professional capacity, believing that she knew something about the case. He had good reason, he explained, to believe from what Gay, his client, had told him before his death in jail, that Phelps and Lake had schemed with Gay to charge the defendants with the crime of arson and divide a \$1,000 reward between them, and that Mrs. Gay was aware of the plot. He had therefore visited her several times to elicit this information from her but had been balked in his efforts by the presence of railroad agents.

The prosecution completed its case on July 8 and rested. Frink immediately announced that he would present a motion, under the common law as well as the statute, to discharge twenty-four defendants against whom no criminal evidence had been adduced. On the advice of the court, however, he waited almost two weeks, and then after the defense had begun to present its case, asked the court to discharge or direct the jury to render a verdict in favor of six minor defendants against whom there was slight or no evidence. After lengthy arguments, the judge instructed the jury to find a verdict of "not guilty" for three, but decided to hold the rest for continued trial. The purpose of the defense, in making this move, was, no doubt, to gain a point with the jury by forcing it to realize the weakness of the prosecution's case. More important, they hoped

to get many of the defendants discharged at this stage so that they could serve as witnesses for the defense: while they were defendants they could not be called to the stand to testify, according to Michigan law. The purpose of the common law ruling allowing defendants to be freed before a trial was over was to prevent the prosecution from including in the indictment important witnesses against whom there was no real evidence in order to deprive the defense of their testimony. Fitch suspected that this was precisely so in the present case. "They have taken," he wrote his wife, "many these folks prisoners to exclude their testimony in my trial so I could not prove where I was so that their lying devils would not be detected in their false swearing . . ." And though Van Dyke now argued that there was sufficient evidence against these defendants to hold them and the court agreed, it is noteworthy that at the end of the trial, he did not even ask for the conviction of twenty of the defendants originally named in the indictment.<sup>67</sup>

With most of Fitch's and Filley's neighbors and friends thus disqualified from testifying, the defense found it almost impossible to dispute the incriminating evidence of Wescott, Phelps, and Lake. It had to try to catch up the hostile witnesses on circumstantial contradictions in their own testimony. Above all, as Fitch put it, "our whole effort must be made to impeach Phelps." But even this plan of defense was beset with unusual difficulties. Counsel felt hampered in their conduct of the defense by the difficulty of private access to their imprisoned clients. The latter, confined to jail and laid low by disease, could do almost nothing in their own behalf. Fitch, the target and the leader, could only call on his wife and his free friends to come to his aid. Money was needed to pay the lawyers and round up witnesses, and it was Fitch who raised the necessary sums, borrowing on mortgages, selling equipment, calling in a note, even giving a mortgage on his land, and eventually bankrupting his estate. At the very beginning of the defense's case, Frink and Howard had to write Superintendent Brooks asking for passes on the railroad for witnesses they wished to bring to Detroit, in the same manner as the prosecution witnesses had been "passed" over the road. "The defendants," they explained, "with one or two exceptions are too poor to pay for procuring the witnesses necessary to their defense."<sup>68</sup>

Despite all these difficulties, the defense was able to produce a

great number of witnesses and present a strong case. Some witnesses from Jackson and Washtenaw counties, having read about the case in the newspapers or heard it discussed, recalled pertinent information and came forward voluntarily, out of sympathy for the defendants or dislike for Phelps and the railroad. Most of them, however, were rounded up by Fitch's devoted friends: Anson Delamater, Henry S. Holcomb, Edward Higby, and Isaac D. Toll, farmers and merchants of Jackson, Michigan Centre, and vicinity. These men did the field work, tracking down leads, interviewing prospective witnesses, taking down their depositions, and bringing them to Detroit to court.

In opening the case for the defense, William A. Howard tried to surmount another great handicap with which the prosecution had hobbled its opponents. He referred to the "ingenious attempts" to prejudice the jury by the introduction of evidence that the defendants had boasted that no jury would ever convict them, that they could bring any number of witnesses to swear them clear. The prosecution, Howard charged, wished the jury to look "with a jealous eye" on all defense witnesses. He said that "the prosecution reminded him of the invention of a pair of yellow glass spectacles which caused lard to look like butter. They viewed everything through colored glass and the acts of all the prisoners looked bilious in their visions."

Howard's counterattack may have helped the defense in overcoming the stigma of premeditated perjury, but it eventually proved futile when one of the defense witnesses broke down and confessed to that very crime. John Hawley of Indiana testified on July 15 that Phelps had in the previous September come to see him and offered him \$50 to burn the Detroit depot and swear it on to some men who lived on the railroad and thus share the reward that the company would offer. If true, Hawley's testimony would have gone a long way toward destroying Phelps' credibility and raised the presumption that it was he who was guilty of conspiracy. Unfortunately for the defense, Hawley was arrested the next day and charged with perjury. Stuart announced in court that Hawley had admitted that his testimony had been entirely fabricated and that he had never seen Phelps until he had come into the courtroom. After the defense had closed, Stuart cleverly produced Hawley in court and there the latter made a complete confession of how he

had been bribed by Elder Billings, the minister at Jackson prison who had been active on behalf of the defense, to commit perjury. He now declared that his conscience had bothered him and he wished to make a clean breast. At one blow, the statements of every defense witness was placed under a dark cloud. True, Seward in his closing argument to the jury, disclaimed responsibility for Hawley and stated that he had been maliciously imposed on the defense by enemies of Phelps. He disowned Hawley as a "silly fool" and declared that others with like testimony had been rejected by the defense itself. On the whole, however, the Hawley incident must have greatly harmed the defense, and the prosecution, in its final pleas to the jury, hammered away strongly at the point.

The case for the defense or at least its impact on the jury was further weakened by the relentless and highly effective cross-examination to which its witnesses were subjected by the prosecution lawyers, Van Arman and Van Dyke. With the canny Phelps at their elbows, advising and giving them leads, the two were able to trip up the country bumpkins who appeared for the defense. Some of these farmers spoke of the two lawyers as being "rather like badgers" and complained of being browbeaten. Van Arman, in particular, savagely and skilfully plied the witnesses with a barrage of questions on circumstantial details that confused and exasperated them and must have raised some doubts in the jury's minds about their general credibility. Van Arman here laid the basis for his reputation as a highly skilled cross-examiner. Thickset and swarthy as an Indian, with a magnificent head and a strong lower jaw, he overawed the witnesses he faced. But one witness amusingly turned the tables on his tormentor. Asked by Van Arman what he and a friend had been talking about, he replied, "He said . . . that there was one dark-skinned, ugly-looking specimen that was a pretty saucy fellow for whom a man had better keep his eye skinned, that he was rather a scabby fellow . . . and told me to look out for him." The witness then coyly added, "He didn't tell his name, but he was one of the lawyers." Laughter in the courtroom greeted the exchange as Van Arman asked again, "Didn't he say that Van Arman was the man?" Came the reply, "He didn't say who he was—only he was a scabby man and told me to look out for him as he would browbeat me pretty well." A moment later,

this witness tried to prove he would not be browbeaten when, in answer to Van Arman's insistent questioning on some point, he said, "I might or might not; don't remember as I did; I won't want to be humbugged any longer; I told you all about it." Directed by the court to answer, he replied non-committally and then parried the next question, "If he did say anything, he may have said so; if he said so—why he said so." And the court again had to order him to answer properly. Other witnesses were badgered and confused on cross-examination to the point of helplessness. As one said to Van Dyke: "You keep rattling around so that I can't find what you are at . . . You mix it up so I can't tell when the day was I saw [him]."<sup>69</sup>

The defense lawyers by comparison were not nearly so effective. Seward and Frink, who did most of the courtroom work for the defense, were overshadowed by their opposites in this respect. Frink's sympathy for his clients was no substitute for ability. And Seward, for all his astuteness and driving logic, which sometimes verged on sophistry, just did not shine in cross-examination. Slight and wiry, with his long narrow head and big nose, thick grizzled hair, and careless dress, the Senator impressed those who agreed with him with his rugged honesty and ability, his calm dignity. As Henry Adams once remarked: "There's no shake in him. He talks square up to the mark and something beyond it." To a less sympathetic observer in that courtroom, he seemed like "a pet fox made vain by adulation. . ." "He sits," this acidulous reporter continued, "pursing his mouth like a toothless old lady, his twinkling grey eyes see all in the room. When speaking to a witness, he rubs his hands in exultation; then gives his head a toss. . ." Nor did the prosecution lawyers hesitate to taunt the Senator from New York, whose public office and peculiar political views laid him open to attack. They made slighting references to the "higher law" and to the morals of men in public life. Van Arman, a Democrat, brazenly accused Seward of vanity inflated by "the fulsome adulation of partizan editors and the interested flattery of partizan friends. . ." Even Judge Wing could not resist joining in such hardly proper depreciation. One Saturday afternoon, while court was met on the second floor of the city hall, Seward requested an early adjournment because of the noise from the market below. Wing replied that as the noise might make it difficult for Seward to be under-

stood, he would agree to any change and if necessary resort to the "higher law."<sup>74</sup>

The burden of the defense case was the impeachment of Phelps. More than one hundred twenty witnesses, most of whom lived within three miles of Phelps home, testified that his reputation for truth and veracity was bad and that they would not believe him under oath. His own brother-in-law and father-in-law added their voices to the chorus of farmers, professional men, and local public figures. It was said that Phelps was no better after he got out of prison than before, that he never should have gotten out of prison, and one witness added that he would not sign another petition to pardon him. People noticed Phelps getting on and off the cars and receiving many letters in the mail and therefore suspected him and thought he was blacklegging. They felt he was not above swearing falsely in the justice courts. It was said in the township that if you wanted stolen horses returned, you needed only to give Phelps ten or fifteen dollars and you would get your horses back, for the fellow was in league with the horse thieves. One man said Phelps could tell more stories in one hour than 2 men could possibly believe in two. Another said he would not believe Phelps as far as he could throw a two-year old bull by the tail. If Phelps told you he had money to lend you, "it was all fudge," and if you did get the money, it would be "over the left." Even the prison guards and overseers told of Phelps' bad reputation while he was in jail—he lied and dissembled and couldn't be trusted. The prosecution's efforts to shake these witnesses and impugn their motives by charging them with sympathy for the defendants could not erase the general impression that Phelps was neither liked nor trusted by his neighbors and was not the most credible witness in a court of law.

The next step in the attack on Phelps was the contradiction of several of his statements which were material to the prosecution's case. Men who had been present when Fitch and other defendants had allegedly made incriminating admissions to Phelps now declared that the conversations had touched only on the most innocuous subjects. Phelps had talked to Fitch chiefly about the prize team cattle which the former said he wished to buy, a subject which Phelps had admitted on the stand that he had used as a pretext to approach the country squire. Numerous other witnesses contradicted Phelps' and Lake's damaging story of what had happened on

April 11, the day they said they had come to the Centre to get the match and be "fixed out" for the trip to Niles to burn the depot there. According to the story now brought out in court, Phelps and Lake had brought the match encased in a box to Michigan Centre themselves, deposited it with Filley for safekeeping, had then inveigled the boys to the tavern at the Centre on the pretext of free drinks and a game of bowls, and finally that evening asked for and received the box from Filley. The railroad agent who had been sent there by Clark for the purpose of witnessing the "fixing out" had seen only a box being delivered to Phelps. The whole series of events related by Phelps and Lake had been nothing but a clever fabrication of circumstances to make it seem as if Filley, Fitch, and the rest had provided the two informers with a match to burn the Niles depot. On the stand a second time, Phelps and Lake denied everything and stuck to their original story.

The defense also brought evidence into court to contradict Wescott. The picket fence around Fitch's house, through which Wescott had said he had crawled to eavesdrop, was produced in order to show that no pickets had been removed and that nobody could have crawled through or under it. The Fitches' adopted daughter, Amanda, and their hired girl further showed that Wescott could not have overheard Fitch and his wife discussing the campaign against the railroad, as he said he did, in bed in their first-floor bedroom, for they had slept upstairs on the second floor that summer. Little Abel Fitch, the adopted son, further testified that the hole under Filley's barroom was too small for him to crawl into, let alone the adult Wescott.

The whole case against Fitch and company, the defense now contended, was nothing but a conspiracy on the part of Phelps, Lake, and Wescott. The three had cleverly contrived a chain of circumstance that pointed to the guilt of the men from Michigan Centre in burning the depot and then strengthened it with their own testimony of criminal admissions. But there was evidence, "dead, cold mute, inanimate matter" that they had overlooked, that spoke in "thunder tones" of the innocence of the defendants. The defense then exhibited a log of whitewood which had been found buried under the hay in an old shack on the farm that Phelps had lived on till shortly before the arrests. The log was of the same kind of wood and of the same dimensions as the match which Phelps said

the defendants had given him. The inference that Phelps had made the match himself and used it to incriminate the innocent, the prosecution waved airily aside on cross-examination, by suggesting that the defense itself had placed the log on Phelps' land. But other witnesses then testified that two or three weeks before the match had first been seen by Clark and Van Arman, Phelps and Lake had borrowed augers the identical size of the holes drilled in the match from one of their neighbors and that Lake had been seen at work with the augers on a log of whitewood, with the shavings lying on the floor about him.

And why had Phelps and Wescott conspired against Fitch? Because they hated him. Phelps, while still serving his term in Jackson, had told the foreman of the prison machine shop that "he was in prison through the influence of Fitch and others, and that, if he lived to get out, he would make them sweat for it, and give them the same feed they had given him." Another prison official told, on the stand, how once when Fitch had been visiting the jail, Phelps had pointed to him and said: "If you knew him as well as I do, you would not think much of him; he was the means of my being here and I'll have revenge or satisfaction."

Phelps, recalled to the stand, said he did not remember having said any such thing and insisted that Fitch was a good friend of his. Another witness, however, brought out that the previous January, when Phelps and his wife had spent the night in his home, he had overheard the couple whispering in another bed in the same bedroom. Mrs. Phelps had asked her husband if he was going to see Fitch the next day and if he thought he could do as he calculated to do. Phelps had replied that if Wescott would do as he had agreed to do and stick by, he thought he would "come a good drive." It certainly seemed as if Phelps and Wescott were working in concert to make money from the railroad by swearing a crime against their common enemy. For Wescott, too, according to one witness, had once openly declared that Fitch was a notorious scoundrel who would appear as a friend to your face, and the moment you turned your back would run a dagger through your heart and that he (Wescott) would see him "peeping through the grates yet."

Having proved to its satisfaction that Phelps, Lake, and Wescott had fashioned a broad net of lies to entrap Fitch and his friends, the defense then delivered what it felt to be the *coup de grâce* to

the prosecution's case. It produced witnesses to show that the celebrated match simply would not burn when ignited. The witnesses told of experiments conducted by Seward, Howard, Frink, and others on a match made according to the specifications Phelps had given in court: the cotton soaked in camphene had been placed in the holes in the log and ignited, but the log had never caught fire, even after four or five attempts. The whole case of the prosecution, the defense suggested, was not only false; it could not have possibly been true. It had not been convincingly proven, moreover, that the fire in the depot had been deliberately set. Several witnesses testified for the defense that they had first seen the flames elsewhere than in the cupola, where they should have been if Gay had really put the match there. Gay, besides, had been disabled at the time and had to use crutches and could not have carried the match all the way up to the cupola. His unwonted prosperity in the month of the fire had not been due to his payment by the "conspirators," but, as his own son now swore, to the payment of several notes that he had held.

In rebuttal, the prosecution brought 118 witnesses who testified that they had never heard Phelps' reputation for truth questioned and that they would believe him under oath. A county judge, members of the legislature, lawyers, doctors, ministers, merchants, and farmers, as well as other prison officials, appeared in behalf of the state's star witness, asserting that from 1840 to the time of his sentence for horse stealing they had generally found Phelps trustworthy and had not been aware of any reflections on his truthfulness in the communities in which he had lived. Many of them admitted, however, on cross-examination, that they had not known Phelps too well and most of them revealed that since the trial had begun, they had heard some people speak "very hard" of Phelps, that "enough [had been] said of him to hang the devil," that they had "heard a general bark about him lately."

Mrs. Phelps herself denied on the stand that she and her husband had ever whispered in bed about a scheme with Wescott to "come a good drive" over Fitch. Indeed, Henry had always looked on Fitch as his friend. She explained, moreover, that Lake had borrowed the augers solely for the purpose of mending the springs on their buggy and had returned them the same day. Additional witnesses then contradicted important points established by the de-

fense: the flames had been first seen issuing from the cupola of the depot; Fitch had been abed in the downstairs room when a tenant of his had come to see him one morning in the summer of 1850. As for the log of whitewood found on Phelps' premises, it had been unearthed at the suggestion of the crafty Burnett and, by implication, had probably been planted there. Furthermore, the prosecution now brought out, Elder Billings, who had bribed one witness to perjure himself, had tried to get a match made in order to secrete it in Phelps' house. While this plan had not been carried out, was it not likely that the whitewood log had been the next best substitute? The state then put Dr. Edmund G. Desnoyers, a Detroit chemist, on the stand to prove that the match if ignited would burst into flame. The experiment took a long time and much effort, and a substitute for camphene, which would not work as specified, had to be used, but there was no doubt that the match was the incendiary instrument used to burn the depot.

At this point, Van Arman launched a sharp attack on the credibility of all the defense witnesses. One farmer and his son had testified for the defense that on April 11 they had seen Phelps and Lake part company on the way to Michigan Centre and that the latter had carried a bundle the size of the match wrapped in red. The prosecution had sent men out to the farm in question, and they reported that from where the farmer and his son had stood, no one could see passers-by on the road much less a bundle carried under the arm. Van Arman suggested that the jury go out to the farm and see for itself. He urged haste, for as the place was so near Leoni, "the defense will bring twenty or thirty to swear away every fence and tree about the place. . ." Seward objected strongly to these personal aspersions and countered with some slighting remarks about Van Arman's dual role as counsel for the people and agent of the railroad, who had "descended to the haunts of vice" to secure evidence. With regard to a visit to the field near Leoni, Seward charged that the prosecution lawyers had already inspected the place in the company of one of the jurors, and sarcastically added that, this time, he hoped defense counsel would be permitted to go along. Van Arman, standing on his dignity, said he would not reply "to the tirade of the counsel, which he presumes is meant merely for the public." Being thick-skinned, he was not at all wounded by the pointed remarks. True, he had visited a

"haunt of vice," but he had "testified to truth he knew, while the other counsel was here for months seeking to screen guilt. . ."

At this point, the court interrupted with the remark that the matter had gone far enough. Prosecuting Attorney Stuart interjected that he thought Van Arman had not gone "near so far" as the defense counsel in rude and indecent personal attacks. Judge Wing replied that he had no wish to prevent counsel from replying to any attack on his integrity but merely desired to prevent excitement. Van Arman would not, however, remain silent. He defended his own actions by citing his high motives, to prevent the destruction of life and property on the railroad. He insinuated that Seward's motives in endlessly delaying the trial had not been so pure, that he hoped to break up the trial by the death or illness of a juror or give the defendants time to concoct perjury. Such conduct, he sneered, could not be distinguished "in point of morality from helping the defendants out of prison by handing them a file."

After this bitter contretemps the prosecution recalled Phelps and Lake to the stand to deny that they had made any matches, or knew anything about the log of whitewood found in the hay, or had separated on April 11, or brought any box to Michigan Centre that day. With this, the state completed its rebuttal and rested.

In many respects, the climax of the trial had already been passed. On August 24, Abel F. Fitch had died in the Sisters of Charity Hospital to which he had been removed from his cell in moribund condition. He had been taken sick with dysentery on August 12 and by August 15 could no longer appear in court, which then adjourned from day to day for almost two weeks. After his death, the trial continued to its appointed end, but the proceedings were something of an anticlimax. The chief defendant was no longer on trial; he had gone, as the piety of the time would have it, to appear before a higher tribunal. The prosecution persisted in its efforts of getting a conviction and setting an example to other opponents of the railroad, but the defense lost its spark with the death of a sick and lonely man.

All during the long hot days in court and the miserable hot nights in jail, Fitch's hope and health had wasted away. In his now sporadic letters home, disease and despair were the keynotes. He continued to proclaim his innocence to Amanda and took some

comfort from the fact that Seward, "the old guv," as he fondly called him, was convinced of it too. He felt sure that the railroad lawyers knew he was not guilty and was all the more appalled at their determined efforts to secure a conviction. It all seemed so unreal to him, so like a dream. "It does not seem possible," he told his wife, "that we can be sworn to States Prison by such devils, [but] they say I shall never breath one half hour of free air while I live." Resigning himself to a martyr's fate, he cried:

If this RR company must rule this State why the sooner we know it the better and perhaps I may as well be the first victim as the last. . . If this is all due and in accordance with the principals of our government and the people of Michigan are willing to submit to it why I must of course suffer but God only knows whos turn will come next.

Again in that dark hour, his mind turned to his dearest Amanda. On August 12, his yearning burst forth: "How much I want to see you and be again at my peaceable home with my quiet little family, language cannot express." It was his last letter home.<sup>71</sup>

Two days later, on August 14, Fitch took to his bed, never to leave it. A week later the dying man was removed from his cell to the hospital. Amanda came from Michigan Centre to be with him in his last moments. An eyewitness wrote the following account of the end:

At 3 o'clock P.M. yesterday, Mr. Fitch became conscious that he could not live, and talked calmly and firmly of his approaching death. He desired that Mr. Frink might be sent for, to consult about his worldly matters. Prosecuting Attorney Stuart and Doctors Rice and Pitcher arrived about 10 o'clock. An examination and consultation was had, and the opinion expressed that he could not survive the night. Mr. Stuart went to the bedside of the dying man when he (Fitch) inquired, "What is to be done now?" and said, "I shall die a martyr to liberty." Soon after, he remarked that he put his trust in God, and desired that he might be baptised. He received the solemn rite at the hand of one of the Sisters of Charity; and whilst in the midst of the ceremony, while committing his soul to God, he declared his entire innocence of the crimes with which he was charged—said he had never violated the laws of his country—that he had simply expressed his opinions, as he supposed he had a right to do, and thought it not just that he should be punished.

Mr. Fitch then called his wife to him, bid her good bye, saying, "Farewell! it is hard to part with the only being I ever loved"; and then bidding adieu to other friends around him, closed his eyes for a moment. Recovering again, he exclaimed, "There is poor, dear little Amanda—I had nearly forgotten her—remember me to her. I dread to die with this

charge resting upon me. Will not the truth come out and my character be vindicated?" Being assured by Mr. Frink that his character should be vindicated, he expressed himself prepared to die; and taking the hand of his wife, and pressing it to his lips, he said, "Amanda, it is hard to part—I die of a broken heart!" and fell back, asleep in death.<sup>72</sup>

That night the body was brought to Michigan Centre, and to Jackson the next morning for the funeral. A procession of carriages and teams nearly a half mile long accompanied the coffin from the Centre. The Congregational Church of Jackson, where the last services were held, was filled to overflowing, with people crowding around the doors and windows. The Reverend Gustavus L. Foster preached the funeral sermon, taking his text from Job 10: 22, "Without any order." Death and affliction often seemed to men as without any order, the preacher pointed out; and Fitch's death seemed to his many friends who believed in his innocence to be so. In God's wisdom and knowledge, however, nothing was without order. Mr. Foster, with characteristic boldness, then proceeded to attack the authorities and the railroad company as being largely responsible for Fitch's death. He condemned "in the name of humanity" the refusal of the courts to grant Fitch bail and characterized the treatment he had received in prison as "an arbitrary rigidity, amounting well-nigh to the infliction of cruelty. . ." Nor could one expect more from "heavy monied corporations" that existed only for gain and violated the Sabbath by running trains on Sundays. "Many of the men composing the company owning this Rail Road may be good men, spending much of their time in Psalm singing in eastern churches," but their minions in Michigan recklessly trampled on civil and divine law every Sabbath day. Such a corporation was bound to act as it did to defend its rights, but individuals too had rights, especially when "arraigned before a civil tribunal which should never feel the bias of a moneyed anxiety." The preacher did not shower the deceased with immoderate praise. Fitch, he said, had been neither a saint nor a vile creature, but a worthy man, who had never turned the poor away from his door and whose generosity had won him more friends than any other man in the region.<sup>73</sup>

The death of Fitch, though it shook the defense, brought it fresh accessions of public support and sympathy. As the astute James F. Joy discerned, it was bound to have repercussions that might affect

the outcome of the trial. The day of the funeral, Joy was writing to Superintendent Brooks that Fitch's death would "undoubtedly have a great effect on the public mind" and cautioned against allowing anybody connected with the railroad to make "injudicious remarks." He added cannily,

if anything be said, it should be to express regret at the course taken by the defendants' counsel which has protracted the trial through the hot season and sympathy for the family of Fitch. Better however say nothing and give no occasion for any invidious remark.<sup>74</sup>

Sympathy needed, however, no new occasion for invidious remarks. As the wife of one of the other prisoners informed her husband with almost hysterical disbelief: "News has just reached us of Mr. Fitch's death and my God can it be true. . . This company I believe means to keep you there till they kill you all." The Jackson *American Citizen* spoke of the "universal sadness thrown over our community" by the death of "one of the victims of the jealousy and malice of the Central Railroad monopoly. . ." For the editor of this Whig antirailroad paper, the death of Fitch only underlined his opinion, expressed earlier, that the trial and the charges were a mesh of lies; though other newspapers on the line and north of the road had been constantly manufacturing opinion in favor of the corporation, he would not be deterred from honest criticism by fear of a monopoly of a few foreign capitalists and their local political hucksters. Now, he reprinted in full the eyewitness account of Fitch's death which the Detroit *Daily Tribune* had printed and added the charge that Fitch had not been treated fairly in his last illness. William Gunn, another prisoner who had died of the same disease a day or so later, had been removed to the hospital at the first sign of illness, while Fitch had not been taken there until he had been pronounced incurable. The editor then followed this charge up by publishing the whole of the Reverend Foster's funeral sermon on the front page and preparing copies of it for distribution in pamphlet form. A little later, sentiment bubbled over into bad verse when there appeared in the columns of the *American Citizen* the following anonymous "Lines Written Upon the Occasion of the Death of Abel F. Fitch:"

Malice, hate, envy, all combined,  
His peace they would destroy,

They tore him from the sacred arms  
Of home and all its joys.

They dragged him to a felon's cell—  
There in that evil hour,  
His heart was crushed, the strong man fell  
Beneath oppression's power.

Worn out at last with dire disease  
And anguish's keener smart,  
Faintly in death's cold arms he said—  
I die of a broken heart.

Ye men of monied power and might,  
Hear ye those dying words,  
Look at the lonely widow's form,  
And see the wreck that ye have made.<sup>75</sup>

Sympathy for the deceased and doubts of his guilt were not confined to Jackson County. The official organ of the Baptists of Michigan, published in Detroit, did not hesitate to celebrate Fitch's virtues and, while withholding comment on the trial, declared that the public mind was divided on the question of his guilt. The Detroit *Daily Tribune* itself, which four months previously had led the pack in the outcry against the desperados from Jackson County, now called Fitch a man who had been known in his community as kind, conscientious, and charitable, and printed the dramatic deathbed account. This newspaper's reversal was neither as sudden nor as capricious as it seemed. Voicing the views of Free-Soil Whigs, it could no longer escape the conclusion that the interests of the railroad and the political fortunes of the Democratic administration were closely bound together in the prosecution. Early in August, after the defense had already presented most of its case, the *Tribune* had begun to express editorial doubts about the guilt of the defendants. A week later, it affirmed "that there is a conspiracy on *one side or the other*" and warned that if other newspapers "enlisted" on the side of the railroad, the *Tribune* would not "be awed by wealth—no matter how great—into silence." It cautioned the prosecution that monied power must be used prudently and "never to control public opinion, Courts, Juries, the Press, or oppress the weak and the poor." Journalistic attacks on the defendants and their counsel would not help the railroad's cause, for there was too much respect for law and justice in the city

of Detroit, "too much hatred of oppression and tyranny whether manifested by governments or corporations."<sup>76</sup>

Sympathy for the defendants strengthened the feeling of the righteousness of their original cause—opposition to the Michigan Central Railroad. Antirailroad sentiment, set back by the sudden strike of the arrests and held at bay by the judicial proceedings, now flared up once more, fueled by the passions arising out of the trial. The focus of this opposition was naturally in Jackson County. Four days after Fitch's death, an "indignation meeting" was held at the courthouse in Jackson to allow the citizens to vent their feelings about the trial and "to ask," as one sympathizer expressed it in a letter to the editor, "if our hardy yeomanry stand ready to be humbled at the beck or nod of the agents of a great monied monopoly." The speakers at the crowded gathering were careful to blame both parties, the men of Leoni as well as the Michigan Central. The company had precipitated the trouble by not paying enough for cattle killed, but this was no excuse for damaging railroad property, and those who did so should be punished. Resolutions were passed protesting the company's use of spies, the manner of the arrests, the excessive bail, the filthy conditions of the jail, and the treatment of the prisoners in a way "as would have disgraced an Austrian Bastille." It was charged, too, that many innocent persons had been arrested to keep them from appearing as witnesses for the defense. Finally, the hope was expressed that the opposition to the railroad in the future would stay within legal limits and would not descend to criminal violence, but would uphold the right and further all means to encourage competition with the Michigan Central. At the close of the meeting, a committee was selected to prepare for a larger mass meeting on September 13 which would give in resounding tones "the verdict of the People as to Right in the unholy war."<sup>77</sup>

The judicious tenor of the indignation meeting, culminating in the proposal to restore competition, suggests an inspiration far removed from the violent anger of farmers whose only piece of livestock had been killed on the tracks. This first gathering obviously laid the ground for the well-organized and well-publicized mass meeting of September 13, which was dominated by outstanding merchants and politicos of the community who were not averse to using the resentments aroused by the trial to further their own

ends. The second meeting, heralded by the *American Citizen* as "5000 Freemen in Council," condemned the authorities for their conduct of the trial in the same terms as its predecessor. It too regretted the criminal attacks on the railroad on the one hand, and the policies of the company on the other. It heard William T. Howell, an old antimonopoly man who had voted against the sale of the railroad by the state back in 1846, call the Michigan Central "the curse of an insolent and overgrown monopoly on the people." It agreed unanimously that "the Central Rail Road [had] been using our laws and Government as a means of outrage, oppression and injustice." A course of action was advised for the future—to keep an eye on the railroad, elect honest men to office, and work to build a branch road from Jackson to the Michigan Southern Railroad at Adrian in order to create competition. Another resolution called on the Southern Railroad to carry out its pledges to build this branch road and pledged the assembled citizens to "meet it frankly and half-way." Here was the voice of the men who were eager for a connection between Jackson and Adrian and hoped then to carry the line through to Grand Rapids as part of the Grand River Valley Railroad. These were the potential investors in new railroads in the interior of the state who found their efforts blocked by the monopoly sections of the special charter granted the Michigan Central Railroad. In closing, the meeting inscribed the name of the deceased leader on its banner and resolved that it would "ever cherish the memory of the virtues of our lamented friend and fellow-citizen, Abel F. Fitch, the victim of a foul conspiracy of unjust oppression and cruel wrong."<sup>78</sup>

The same issue of the Whig *American Citizen* which printed the detailed story of the mass meeting also contained a two-column discussion of the whole conflict of the farmers and the railroad, defending the prisoners and attacking the policies of the company and its local supporter, Wilbur F. Storey, publisher of the Democratic *Jackson Patriot*. Editor De Land carefully explained his own position: he wished "to preserve the sovereignty of the State in the hands of the people and keep it from the grasp of foreign capitalists and their lickspittles"; he did not wage war against the company and its rights—it had in fact greatly benefited the county and the state—"but a war as lasting as life is waged against its despotism, as displayed by its agents." Broadening his attack, De

Land called the railroad monopoly a "locofoco bantling" which received its special charter from a Democratic legislature and which subsequent Democratic legislatures had "tinkered up . . . to suit Boston capitalists and remove them from the reach of the people." The corporation in return had given the Democrats funds and votes which enabled them to continue in office.<sup>79</sup>

The shift in opinion even brought defection in the ranks of the prosecution. Jacob M. Howard, the Whig politician who had been hired by the company to assist in the prosecution, became convinced that he had made a mistake in taking the case and withdrew from all active participation in the trial, explaining that he no longer believed Henry Phelps was telling the truth.<sup>80</sup>

The railroad and its supporters began to fight back. The Democratic organ, the *Free Press*, and the old-line Whig *Advertiser*, in a nonpartisan spirit, continued their attacks on the defendants and their counsel in defense of the Michigan Central and the interests of the city of Detroit. The company itself tried to curry whatever favor it might by placing a special train at the disposal of the court for a visit to the scenes of the alleged crimes. The train carried the party of judge, jury, and lawyers all the way to Marshall where they were dined and lodged overnight at the company's expense. Largesse was extended to the point of cajolery by offering free rides on the cars to anyone who lived between Jackson and Detroit to come and hear the closing arguments of counsel. One of the eastern directors of the company resorted to threats while on a visit to Detroit. He reportedly said: "These prisoners must be convicted and unless they are, there is over \$7,000,000 of property rendered worthless. If they are not convicted, I will sell my stock for what I can get, for it will not be worth a cent in two years." This injudicious outburst, if true, was calculated to coerce the public into demanding a conviction, and certainly did not reflect the realities of the railroad's situation.<sup>81</sup>

This battle for public opinion was carried over into the lawyers' final arguments to the jury. For two full weeks, the big oratorical guns boomed away at the judge, jury, and each other, and at the public within and without the courtroom. To accommodate the large audiences of nearly a thousand who came to revel in the festival of oratory, the sessions of court were held in the great hall on the third floor of the new Fireman's Hall. Here, Stuart, Van

Arman, and Van Dyke summed up the case for the state and refuted the arguments of the defense, while Frink, Hewitt, William A. Howard, and Seward sought to destroy that case and establish the innocence of their clients by pinning the crime of conspiracy on the prosecution's chief witnesses, Phelps, Lake, and Wescott. Van Arman spoke for two-and-a-half days, hammering and slashing away at the defendants with vicious invective and pulling all the stops in his maudlin appeals to the jury. Seward replied for three days in a masterful harangue compounded of logic, learning, melodrama, and cutting sarcasm, which even the hostile *Free Press* found uncommon, though it sneered at the speech as a mixture of "appropriate quantities of the dough, the sugar and the spices." Van Dyke met the challenge admirably and more than matched Seward's forensics. Tall, dignified, elegant, this "Chesterfield of the Michigan Bar," made the final plea for the state, suavely and skillfully demanding a conviction on the highest moral and patriotic grounds. The other lawyers delivered addresses of lesser length and force, and by September 25 the case was ready to go to the jury.<sup>82</sup>

Almost as much as on the merits of their respective cases, counsel dwelt on those issues and charges which were agitating the public. Echoes of the excitement of the early days of the trial, of anti-corporation sentiment, of the death of Fitch, and of the resurgence of sympathy for the defendants bounded around the walls of the crowded courtroom. Now it was the defense which conjured up the ogre of an omnipotent monopoly, which had whipped the public into a lather of vengeful delirium and was intent on crushing valiant, humble citizens fighting only for their rights under the law. And it was the prosecution that counseled the members of the jury to mistrust and ignore that fickle guide, public opinion, and follow only their consciences. Van Dyke admitted innocently that right after the arrests for an atrocious crime that almost burnt the whole city to the ground, "it was natural that for a time, the public pulse should beat the quicker," and then rhetorically flung the charge of arousing the public back at the defense:

Have the prosecuting counsel run through the streets pledging their honors to the innocence or guilt of the prisoners? Have they sought, day after day, to raise an influence that might be brought to bear on your deliberations? Have they sown distrust broadcast in the community, or gathered public meetings for the purpose of denouncing these judicial

proceedings? Have they got up deathbed scenes . . . ? Have they published sermons of doubtful morality and perverted taste, for distribution . . . ? Have they passed through the streets, stating that they knew, and could wager, that certain of the jury they might name, would never agree to convict?

The lawyers for the defense accused the state of hasty circumventions of the law and of virtually depriving their clients of the right to bail, of using spies with criminal records to collect evidence. To these charges, Van Arman and Van Dyke replied that the trial had been a free and fair one, according to law, such as the defendants could not have had anywhere else in the world. As for bail, it was the court that had fixed the amount, not the prosecution. It was, furthermore, by no means excessive, considering the enormity of the crime. If the bail had been any less, these dangerous criminals would have been set free to continue their attacks on life and property. "Would you have sent your wife and family upon that [rail-] road," Van Arman asked the jury, "with these men at large?" And in using spies of shady backgrounds, the company had only fought fire with fire; their work had been necessary and useful and hence honorable. Besides, who were these men who now appealed for their rights at law? "Have not these men for two years been in open and avowed rebellion against all law . . . , trampled upon all legal, social and moral obligations and become and proclaimed themselves most openly, mere pirates, outlaws, robbers and murderers?" By their crimes, have they not forfeited "all protection and consideration from their fellow citizens?"

Counsel for the people went on in this vein, thoroughly to blackguard the prisoners in the dock. Seward had pictured his clients as simple, honest farmers and mechanics, "pioneers of the State," poor struggling settlers in a new land, in the rural hamlet of Leoni, who were seeking justice at the hands of powerful wealth. The prosecution lawyers dismissed this idyllic portrait as ridiculous. These men were an organized group of reckless and depraved felons who would stop at nothing to gain their ill-conceived ends. "Rural hamlet, indeed," Van Dyke sneered. Leoni was a benighted sink of iniquity which had steadily been declining in population. It was not strange that its people were ready to burn and kill. Van Dyke explained:

There is no accounting for the actions of men who begin by believing

in the utter corruption of all who surround them, even of those whose virtue and wisdom have placed them to preside over the most sacred institutions; and who end by adopting vengeance as their guiding star, and hugging that hideous passion to their heart. They become blind to reason, justice and humanity. Every feeling turns to morbid hatred; every pulse throbs with bitter passion, and innocent and guilty are alike sacrificed to minister to an insatiate appetite for revenge.

Some of the defendants had died, but, ah, sighed Van Dyke, he could not but wish "that while yet in their childhood they had sank sweetly into their last repose, long before vice and crime stained their youth and subjected their manhood to this ordeal at the bar of their offended country." Nothing was sacred to them, shouted Van Arman, "not even the holy Sabbath. Look at their moral character, playing cards, gambling, drinking and carousing Sabbath after Sabbath. Listen to their horrid oaths—their blasphemies... Is not crime the natural and appropriate sequel of such a history?" Not merely the actual crimes of the defendants, but all the possible horrors of their actions were spelled out for the jury in fascinating detail verging on bathos. The Leoni villains had once obstructed the tracks, meaning to throw off a scheduled passenger train into the Dry Marsh, but by chance a freight train had been stopped. Van Arman would not, however, let the occasion slip by; he wrung every drop of sentiment from it.

Little did the thoughtless and merry company who left your city on that bright summer day... dream of the deadly perils which beset their path. Little did the admiring traveler deem, as he gazed upon the smiling landscapes... that such a land could harbor the bloody assassin—that beneath the shade of those sunny groves crept, with stealthy tread, the murderer, against whose wiles and snares the arm of the law was powerless to protect his life. Little deemed the mother, as she fondly played with infant slumbering upon her breast, that its winding sheet, and hers, was prepared in the cold bosom of that sunless and dismal lake! And yet it was for them—for that fated train, thus heavily laden with human beings, that the fatal toils were set. In the silent depths of those stagnant waters, where the blessed light of heaven could never smile upon them, their grave was dug.

Van Dyke was not to be outdone by his colleague. He too dwelt tearfully on the catastrophe that had been averted. "Fancy," he begged the jury,

fancy that doomed train approaching, with its precious freight—families returning from long and painful absence—visions of home and hap-

piness flashing before them; on they rush unconscious of the fate prepared for them; there is a sudden stop—one mighty bound of the engine—one shrill whistle, one wild scream, and all is over. They are sunk, entombed—not in the beautiful cemeteries where mourning friends may weep over their ashes—not even in the bright clear waters of our lake; but amid the slime and mud that ages have accumulated in that dismal spot.

The defense lawyers could not match these fanciful previsions of doom, but were not altogether inept at similar pathetic excursions. They did not hesitate to play up the death of Fitch for all it was worth, presenting him as a martyred hero, a victim of greed and cruelty. Frink perorated on the theme: "His life has been sacrificed in the midst of his days. God in his providence has permitted him to fall upon the altar of freedom—a victim of injustice and oppression." Fitch was a fine man, a gentleman, whose innocence counsel never doubted. And, Frink concluded, soberly prodding the jury, "a higher and holier tribunal has ere this judged him in mercy." Seward chimed in, in turn, "Death . . . has invested the transaction with the dignity of tragedy." In a voice husky with emotion and constant snuff-taking, and without showy oratorical grace, he delivered his own peroration, which must have left the jury floundering in its own tears. "Fitch," he exclaimed,

who was feared, hated and loved most of all, has fallen in the vigor of life  
"hacked down

His thick summer leaves all faded!"

When such an one falls, amid the din and smoke of the battlefield, our emotions are overpowered—suppressed—lost in the excitement of public passion. But when he perishes a victim of domestic or social strife—when we see the iron enter his soul, and see it day by day, sinking deeper and deeper, until nature gives way and he lies lifeless at our feet—then there is nothing to check the flow of forgiveness, compassion and sympathy. If in the moment when he is closing his eyes on earth, he declares, "I have committed no crime against my country, I die a martyr for the liberty of speech, and perish of a broken heart"—then, indeed do we feel, that the tongues of dying men enforce attention, like deep harmony. Who would willingly consent to decide on the guilt or innocence of one who has thus been withdrawn from our erring judgment, to the tribunal of eternal justice? Yet it cannot be avoided. If Abel F. Fitch was guilty of the crime charged in this indictment, every man here may nevertheless be innocent; but if he was innocent, then there is not one of these, his associates in life, who can be guilty. Try him, then, since you must—condemn him, if you must—and with him condemn them. But remember that you are mortal and he is now immortal; and that before that tribunal

where he stands, you must stand and confront, and vindicate your judgment. Remember, too, that he is now free. He has not only left behind him the dungeon, the cell and the chain; but he exults in a freedom, compared to which, the liberty we enjoy is slavery and bondage. You stand, then, between the dead and the living. . . You will, I am sure, be just to the living, and true to your country; because, under circumstances so solemn—so full of awe—you cannot be unjust to the dead, nor false to your country, nor to your God.<sup>83</sup>

Van Dyke, immediately following Seward, could not let the appeal go unchallenged. He opened his address with ironic modesty:

While I feel pleased in beholding the laurels which this trial has entwined around other brows, I will seek to gather none for my own. I will neither wander into the paths of fancy, nor address myself to those who sit without the jury box. . . I shall not seek or hope to leave the impress of oratorical power upon your imagination. . . You must expect from me, gentlemen, no eloquent declamations. . . I will not weave a single wreath of fancy. . . I [shall] refrain from pursuing the meteoric fancies, eloquent philippics and sublime apostrophes. . .

He then struck back at the defense's dramatic evocation of death and innocence. What had the deaths of some of the defendants to do with the case? Because two of them had died, was that any reason to infer the innocence of the remainder? "Permit me to ask you gentlemen—what have you to do with death bed scenes—false in fact, morbid in taste and wholly irrelevant to this issue." The death-bed drama was fiction. Fitch was without doubt delirious in his last moments. His dying words, "dressed up as they now are . . . , would meet from the deceased, could he hear them, no sign of recognition. . . They might serve to adorn a page of some yellow covered novel—they have served to grace two elegant perorations," but were out of place here in a court of law.

Even more reprehensible, Van Dyke thought, were the strictures on the railroad corporation delivered by his opponents. They had described the railroad company as a grasping monopoly that would brook no criticism or interference in its relentless pursuit of gain, that sought to dominate the state and the people with its power and crush all who opposed it. The trial, according to the defense, was no longer an issue between the state and the defendants, but as Frink put it, between Fitch and "the monetary power" of a corporation with seven million dollars capital, "a power behind and above the government—a power that is seldom regulated by humane and

just sentiments; that always seeks to crush those it cannot cajole . . ." Seward, though he had disclaimed hostility to corporations and support for illegal methods to fight them, had also dwelt on the abuse of the people by the Michigan Central. "Corporate wealth," he had warned the jury,

cannot long oppress the citizen in such a country and under such a government as this. Your verdict against these defendants, if it shall appear to be well grounded upon the evidence, will abate a rapidly rising popular commotion; but, if it shall not be so sustained by the evidence, a people which make the wrongs of each one the common cause of all, will pick strong matter of wrath out of the bloody finger ends of a successful conspiracy.

At this, Van Dyke was shocked. He assailed such demagogic appeals to bend justice to popular clamor. He defended and lauded the corporation as a harbinger of endless prosperity and universal bliss. It was not true that strife had come into Michigan when the state sold the railroad to a corporation. It was, on the contrary, a "fortunate hour," for

where heaven's light was once shut out by dense forests, it [now] shines over fertile fields and rich luxuriant harvests . . . ; hope and energy sprung from their lethargic sleep, labor clapped her glad hands and shouted for joy; and Michigan, bent for the moment like a sapling by the fierceness of a passing tempest, relieved from the debts and burthens, rose erect, and in her youthful strength, stood proudly up among her sister states. . . A detestable monopoly! These railroads built by united energies and capital are the great instruments in the hand of God to hasten onward the glorious mission of Religion and Civilization.

Van Dyke sorely regretted that "the eminent counsel" had permitted his "energetic bile" to gush forth for "sinister purposes" and had talked about sacrificing citizens at the behest of dangerous monopolies. Worst of all, Seward had intimated that if the verdict were not satisfactory, the people would take things into their own hands. These were "poisoned and dangerous sentiments" appropriate not for a court of law in the state of Michigan but for some bloody Paris tribunal. "Ah, gentlemen," Van Dyke warned the jury, "there is a worse evil abroad through this land, than the overshadowing power of corporations. These are *isms* of dreadful and fearful import around us. They menace our public institutions and private rights. There is a spirit of disloyalty to law and country." There are attacks on the revered traditions of our land in the

name of a "higher law," in which public clamor is placed above the law and the people are aroused to sit in judgment over courts and juries. This evil can lead only to the destruction of civilization. Beautiful, prosperous, peaceful Michigan—it has come into being and flourished mightily under the aegis of the law. Disregard the law and you destroy all this. But enough! What he said surely did not apply to the law-loving citizens of Michigan, but rather to "some foreign district, some land where anti-rent and anti-law make part of her history," like Mr. Seward's state of New York.

Finally, Van Dyke, like Van Arman, called for a conviction not merely on the intrinsic merits of the case but equally on its all-embracing importance. "This cause," he pointed out,

has spread through the confines of our State and beyond its limits, and a world is looking on to see if there is here strength, and virtue sufficient to assert the integrity of the law. . . . The dignity, the honor, and the character of Michigan are in your keeping. . . . We are called upon by every high consideration to do our duty in this case . . . Gratitude for the lovely heritage God has given us; patriotism, love for the beautiful peninsula, in which is fixed our destiny and centered our all of earthly good and hope . . . all unite in one voice, and ask that you be firm, free and steadfast on this occasion. For if these dangerous doctrines which produced the outrages we are considering, are to spread from the hamlet of Leoni, throughout the breadth of the land, and even to the jury box of our courts; if men animated by deep hate against a corporation, feel and think that they are justified in redressing their own real or fancied wrongs, in their own way; if courts are to be scouted at, laws to be trampled on, order rushed into wild confusion, and crime sympathized with and left to stalk unpunished; then indeed have evil days come upon us. Capital, virtue, peace and property will be trodden over, and crushed by mob violence and all the dire evils which will follow in its train. . . . The first jury which renders a verdict, tainted by the unhallowed spirit of fear, or public opinion, or prejudiced by loud clamors against monopolies and tyrannical corporations, will have stricken a death blow at this country's honor and welfare.

Van Dyke was confident, however, that Michigan would be "loyal to the Union and to the law."

These solemn appeals for loyalty to God and country overshadowed in large measure the summing up of the evidence. In elaborating the legal case against the defendants, the lawyers for the prosecution stressed the fact that they had been engaged in a conspiracy. The men of Leoni, it was clearly pointed out, hated the railroad, swore to get redress, obstructed the tracks and attacked

the trains, threatened to burn depots, met and discussed their plans, and took oaths of mutual loyalty: all of which was evidence enough that they were conspiring to destroy railroad property until their demands were met. It all raised more than a presumption that they also burnt the depot in Detroit. The later attempt to burn the Niles depot was equally part of the over-all plan. True, each of the criminal acts against railroad property at or near Michigan Centre had not been brought home to a particular defendant. But it was not necessary to prove who committed each and every crime. If one act was proved against one man, the presumption was that all were guilty of all the acts, unless proven innocent. All the defendants, moreover, need not have aided and abetted in each outrage nor even have been present. It was sufficient that they had been cognizant of the offense and consented to and approved of it. That was the essence of conspiracy or combination: the necessary elements of "unity of motive, purpose and design" were all present.

As to the crime charged in the indictment, the burning of the depot, there was no doubt that the building had been destroyed by an incendiary. The place where the flames had first been seen by reliable witnesses, in the cupola, high above the elevating machinery and the storage bins, proved that the fire had not been an accidental one. Too, the depot had been shut down at midnight and all the candles extinguished. In any case, Gay had admitted to Phelps that he had set the fire with a match. Experiments conducted by the chemist, Dr. Desnoyers, proved that the match would burn for several hours, as Gay said it had done. Van Arman had, nevertheless, to admit that it had not been proven beyond a shadow of a doubt that the depot fire had not been an accident, for, as he explained, "There never was a case of burning where the proof was certain that it did not take place by accident."

Van Dyke and Van Arman then stoutly defended the veracity of Phelps and Wescott, their star witnesses. Of Phelps, Van Arman said, in all candor:

He is either the most execrable villain that has ever appeared in modern times, either the vilest and most abandoned wretch that Providence has ever permitted to pollute the earth . . . or he is the most deeply wronged man on the face of the earth. If he has deceived us, there is no penalty too heavy for his crime.

But he could not have possibly deceived all the counsel for the state as well as Superintendent Brooks and Mr. Clark. "You must see," Van Arman argued, "that we all have fully believed [him] or we had not dared to commence these proceedings." The prosecution had not, moreover, accepted Phelps' testimony, crucial as it was, without corroboration. Clark and Van Arman had confirmed Gay's confessions, and an independent witness had been present when Phelps had been "fixed out" for burning the Niles Depot at Michigan Centre the night of April 11, 1851. Nor had Phelps' testimony, or Wescott's, been shaken on cross-examination. Both of their stories were so long and so complicated, they could not have possibly been fabricated, and the defense's attempts to contradict them had utterly failed. On the contrary, it was the defense witnesses who were tainted with perjury. Van Arman pointed out that Hawley himself had confessed to that crime, and added, "It would be rashness after the experience we have had of the skill and resources of these defendants to doubt for a moment that they could prove anything they wish." The charge that Phelps, Lake, and Wescott had themselves conspired to pin the crime on Fitch and company was equally baseless. They had no cause to injure Fitch; they were indeed his friends and accepted as such until exposed as railroad agents. Phelps and Wescott could not have schemed together, for they had not been acquainted until after they had made their separate reports to Clark, who had not let one see the other's reports. Phelps and Lake could not have made the matches: they had not seen one until Fitch had shown them one. The log of whitewood had probably been planted on Phelps' vacated premises, for whatever he was, Phelps was no fool who would have left it there to be found and used as evidence against him.

It was the defendants who had conspired, prosecution counsel contended, to destroy the property of the railroad and who had hired Gay to burn the depot in Detroit. There was no doubt that Fitch knew Gay and had negotiated with him in the summer of 1849. Had not Gay mentioned his name and that of others at the Centre? Aaron Mount, one of the defendants, had, according to Lake, admitted being associated with Gay in crime and had brought Fitch and Gay together. Too, Wescott had testified that he had followed Fitch to Gay's house in Detroit and seen him enter it.

On this point, the prosecution made much of the testimony of

Dr. James A. Hahn, mayor of Marshall, who had been on the train that had brought the prisoners to Detroit. According to Dr. Hahn, Fitch had asked to see the warrant for his arrest. As he read it, he said that he had a slight acquaintance with Phelps some years before the latter had gone to prison but since then had had little to do with him. Fitch had then added that he saw that he was charged with being an accomplice of a certain Mr. Gay, but that he did not know Gay and had never heard of him. And then, after a pause, he said, "I believe that old Gay has turned state's evidence." This last remark, Van Dyke insisted, unquestionably proved that the squire of Michigan Centre knew the bawdy-house keeper of Detroit; otherwise, why should Fitch call him "old Gay," and what state's evidence was there to turn.

In concluding his argument, Van Dyke briefly reviewed the evidence against each of the thirty-two defendants. Against seventeen of them, he admitted that, though there was evidence to show that they were involved in the general conspiracy to destroy railroad property, there was none implicating them in the crime of burning the depot. He said he would be satisfied if the jury acquitted these and told them "to go and sin no more." Against three of the defendants, the evidence was doubtful, and the jury would have to consider their cases carefully and then decide as it saw fit. Against twelve of them, whom he named, he had no doubt that the evidence was strong and true that they were clearly guilty of being accomplices before the fact. For these, he demanded a conviction, so that history might record the fact that "a firm and able judge, an intelligent and honest jury, unawed by fear and prejudice, and unawed by threats, vindicated the violated law."

In their closing arguments, Frink and Seward denied completely the guilt of their clients and tried to prove that there was no basis in fact or in law for the case against them. The charge of conspiracy was false and even ludicrous. The criminal acts against railroad property in Jackson County had indeed and unfortunately been committed, but they were "individual, casual, unpremeditated crimes," in which it was proven that only three or four of the defendants had been involved and only those present had been implicated. The expressions of hostility had been legitimate individual opinions, and the threats uttered, "individual, impulsive, passionate, but idle." All the meetings cited as evidence of a con-

spiracy had been accidental, not preconcerted, irregularly and openly held in the public barroom, "open to all comers, whether village gossips or travelers." All the criminal acts and gatherings had, moreover, taken place in Jackson County, in another jurisdiction, and were no concern of the jury in Wayne County. In vain the defense had opposed the admission of such testimony on the ground that those crimes, even if committed by the defendants, could not be proven under the present indictment; that if the defendants did or did not burn the depot, it mattered not whether they conspired to do so. The prosecution had offered this mass of evidence, promising to prove a conspiracy to destroy all the property of the railroad, including the depot. This they had not done. They had succeeded, however, Frink charged, in their design "to subserve the same unholy purpose of the declarations, made not only in the streets, and in public journals, but in the presence of this court, denouncing in advance, as outlaws, and as their perjured abettors, every man who should be a witness for, the defendants."

Seward then attacked Wescott and his testimony, on which the charge of conspiracy was largely based. Wescott, Seward charged, who had told of the alleged declarations made to him by the defendants and to him alone, in the presence of no one else, was nothing but a "hireling informer," of dubious repute, a coward, with a grudge against Fitch. He had been contradicted in many parts of his story. Most of the remarks he attributed to the defendants showed nothing more than hostility to the railroad. Wescott tried to supply this deficiency by adding that Fitch, Filley, and Corwin had called themselves "The Leoni Band"; that Filley had angrily declared, "Leoni against the world"; that other Leonians had said to him that they were banded together for the destruction of the road unless they were paid for their cattle. Seward pointedly asked:

Do you not see how admirably this testimony is adapted to the exigencies of the prosecution? I imagine I hear the counsel, Van Arman, say, wanted—proof of a conspiracy. Wescott: They called themselves the Leoni Band. . . . Van Arman: Wanted—proof that the band was banded together. Wescott: Fitch said—we are banded and conspired together against the railroad company. Van Arman: Wanted—proof that the object of the conspiracy was the destruction of the railroad. Wescott: Fitch said, we are banded and conspired together for the entire destruction of the railroad. . . .

Seward then reduced to absurdity the whole notion of a conspiracy:

What a solemn and fearful scene that must have been when these conspirators threw off the mask—"Leoni against the world." Where and what was this Leoni? It was a hamlet among the oak openings of Michigan. What was its magnitude? It consisted of a country tavern, a store house, a school-house, a church, a dozen humble tenements. Who were the members of this band? One country gentleman, one keeper of a tavern and ball-alley, one drinking teamster, one backwoodsman, and one village mason; and they acted their parts with as much boldness, and even more, than the clowns in the interlude in *Midsummer Night's Dream*. For when Bottom proposed to act the part of Lion, he was overruled lest he might roar too loudly, and so "frighten the duchesses and the ladies." No such timidity distinguished the clowns of Leoni. They proclaimed themselves the unterrified—"Leoni against the world."

With this, he mockingly dismissed the witness: "Adieu, Mr. William D. Wescott."

Coming closer to the heart of the case, Seward blasted the evidence purporting to connect the defendants with Gay in the burning of the depot. In the first place, at least nineteen of the defendants had not been shown to have had any connection with Gay. Against the rest, there were only the reported admissions by Gay and the defendants themselves, "the most uncertain and unsatisfactory of all testimony," because it consisted of mere repetition of oral statements of others, liable to be misunderstood or incorrectly heard or reported. All the alleged declarations and admissions, Seward insinuated, bore the mark of falsehood, for they were all couched in the language of the witnesses who reported them. It reminded one of the "Grecian oracles" or the "Rochester rappings," where the ghosts "were learned in the languages of the conjurors."

Such admissions, moreover, meant nothing in the face of the fact that the crime could not have been committed in the manner supposedly confessed. The match as described by Phelps would not burn. It could not have burst into flame several hours after it had been lighted in Gay's house and then carried through the streets in a covered box. Even if it had, Gay could not have deposited it unseen in the cupola at 7 or 8 P.M., as he reportedly said he did, with the guards and employees busy all about the depot. Why had no one seen Gay? Why had the prosecution not

brought Gay's wife to testify that he had left his home with the match that evening? Why had they spirited her away? Nor had it been proven beyond a reasonable doubt that the fire had been incendiary and not accidental. Even if it had first been seen in the cupola, as the prosecution contended, that still did not prove it had not been accidental.

More important, Seward continued, it had not been incontrovertibly established that any of the defendants actually knew Gay. Fitch had not been in Detroit in the summer of 1849. Wescott's testimony that he had followed Fitch to Gay's house early in 1851 had been contradicted by witnesses who had been in Fitch's company all the time he was in the city. The meeting Wescott referred to had, in any case, taken place after the fire. As for Dr. Hahn's testimony about Fitch's remarks on the train after the arrests, Fitch certainly was truthful in denying all knowledge of Gay before the arrests. After the arrests and after he had read the warrant, "old Gay's" name must have become as "familiar as household words." No evidence had been brought to show that Fitch had ever negotiated with Gay to undertake the crime. When and where had this been done? Fitch was dogged by spies and certainly any meeting between him and Gay would not have remained unknown. Absolutely no proof had been offered that any of the defendants had made the match and then delivered it to Gay, or that any payment had ever been made for the crime. Had all this been done by messenger or correspondence? Why had not Phelps testified to any of these crucial transactions? Why had not the defendants revealed these important matters to Phelps and the other spies as they had the other details of their crime?

The charge that the defendants had hired Gay to burn the depot rested entirely on admissions, that is, on what Phelps and Lake said Gay and Fitch and others had told them. And Phelps and Lake and Gay were utterly unworthy of credit. Gay, Seward specified, was a man . . . who had been convicted of more than twenty crimes, ranging from petit larceny to murder . . . , a man who lived in daily association with culprits, and who at the time kept a house of ill-fame, and thus subsisted by the debasement of one sex, while he harbored the most depraved of the other.

His purported admissions as to the complicity of the defendants in the crime, moreover, were not admissible as evidence. Gay was

dead and no longer on trial. As a principal, his admissions could not be evidence against his accessories until he himself had first been convicted. Hence, Frink argued, the whole trial had been invalidated on the technical ground that Gay had not been found guilty and the indictment of accessories alone must charge the offense in substantive language and not in a dependent manner. Seward did not go along with his colleague in charging a mistrial. He merely contended that the testimony of Gay's declarations had been allowed to come in unadvisedly, on a promise by the prosecution that had not been kept, and should therefore now be stricken from the record.

As for Phelps and Lake, both were convicted criminals. Phelps had, in addition, been impeached by over a hundred witnesses. The witnesses brought by the prosecution to uphold his reputation had not destroyed that impeachment. Some of them knew nothing of Phelps' character after 1842, and all of them without exception, when testifying favorably as to his reputation, had declared "not that they [had] heard it discussed and then pronounced good, but simply that they [had] not heard it discussed at all . . ." And by the very neighbors who had come into court and said that his character and reputation were bad!

"I ask you now to consider," Seward reminded the jury, the circumstances under which [Phelps] appears. He testifies under the impulse of an overpowering necessity. A stipend of \$40 a month as an informer is his only resource for support. . . His fortune involves two alternatives; one that he carry the prosecution through and cause these defendants to be sent to the State Prison and thus establish a claim to be restored to that social confidence which he so early lost; the other that he shall be convicted of wilful and malicious conspiracy against these defendants with perjury and subornation of perjury, and return, after a guilty respite of two years and six months to the State Prison whence he came.

Phelps was motivated, besides, by an "impulse of a studiously concealed but malevolent and persevering revenge against Abel F. Fitch, who was originally the chief mark of this fearful prosecution . . ." Vehemently, Seward dismissed the state's star witness: "Enough then for Henry Phelps. 'Room for the leper! Room!'"

Phelps' testimony, Seward also pointed out, had been contradicted again and again in its circumstantial details by many witnesses. He had testified to appointed meetings with Fitch in Mich-

igan Centre and in Detroit, in which the latter had allegedly talked of his great success in burning the depot, and asked Phelps to burn the Niles depot and engage in counterfeiting. Witnesses, however, had merely heard Phelps and Fitch converse about such commonplace subjects, as Fitch's twin oxen or where fish and provisions could be bought in Detroit. The imputation was clear that Phelps had simulated a close acquaintance with Fitch under various pretexts, reporting the while a farrago of incriminating admissions, of which the witnesses had heard nothing. There was, too, a suspicious identity in the language of the admissions reported by Phelps and Lake, an identity "as harmonious as in the ritual of a Free Mason's Lodge or in the liturgy of the Episcopal Church," and which smacked of their sinister purpose and falsity.

The whole case, the defense reiterated in conclusion, was a false and diabolical conspiracy by Phelps and his accomplices. The motives of the conspirators were hatred of Fitch and the hope of sharing the large reward offered by the railroad company. To this end, the three testified falsely that Fitch and the others from Leoni had admitted hiring Gay to burn the depot. Phelps and Lake had made the matches themselves and pretended to have received them from Fitch. They had brought a match themselves to Michigan Centre the day they left to burn the Niles depot. They had given a match to Gay so that Clark and Van Arman could see it in his possession. Phelps had induced Gay to admit that he had burned the depot, and the latter was precisely the kind to confess to a crime on the promise of immunity and a share of the reward. Or Gay had perhaps been duped by Phelps and had been arrested to keep him from testifying. The conversations between Gay and Phelps, reported on the witness stand by the latter, showed that some such conspiracy had been in the minds of the two. Phelps had testified that he had met Gay in Detroit in the Palo Alto saloon shortly after the depot fire. The two had discussed a scheme to free a mutual friend who was in jail for counterfeiting. They were to burn the railroad depot, get witnesses to swear the crime on some third person they disliked, and then have their friend in jail inform against the hapless victim. Their friend would as a result be freed and all three would share the reward received from the railroad company. Phelps had then suggested that the plot to free their friend be based on the fire that had already taken place rather than on

some future one. These conversations, Phelps had revealed in court, had gone on over a period of weeks, and it was in the course of them that Gay had admitted that he burnt the old depot. "What," Seward asked after repeating Phelps' story, "what are all the pretended admissions of Gay and Fitch now produced here but the fabrications thus early foreshadowed?"

Seward then referred to Prosecuting Attorney Stuart's plea that Erastus Smith be acquitted, as further proof of the existence of a conspiracy. Smith was one of the defendants, a Detroit friend of Gay's, who, according to Phelps, had admitted knowing of the plan to burn the depot and receiving part of the \$150 Fitch had paid for the crime. Now, Stuart in his closing argument had asked for the acquittal of Smith on the grounds that he had been seduced by Phelps into falsely admitting his complicity in a crime of which he had no knowledge. "When I heard [Stuart] submit this extraordinary proposition," Seward triumphantly declared,

I thanked God and took courage. It revealed the secret of this entire prosecution. It showed that Smith had been fraudulently made a defendant that he might utter without oath, false allegations to convict the defendants at Michigan Centre, under an assurance that he should be acquitted himself. And now, gentlemen, since Smith's allegations are admitted to be false, are Gay's averments, made under the same circumstances, true? . . . If Smith was seduced so easily by Phelps, Gay had even less virtue to resist his seduction. I declare, gentlemen, my profound conviction that the whole prosecution was conceived in fraud; that George W. Gay never burned the depot; that he and Smith falsely accused themselves of that crime under a promise from Phelps to share in the reward of a conviction of the defendants . . . ; and that Gay, if he had lived to go through a trial and conviction, would have been recommended for a pardon, and would have shared that reward.

Seward, in brief, charged that Smith was a partner to the conspiracy, an accomplice of Phelps in the plot to convict the defendants, and that Stuart's plea for Smith's acquittal proved that charge. Van Dyke, too, must have thought that Stuart's plea was a mistake for, in closing for the prosecution, he ignored it and asked for Smith's conviction along with the rest.

After the counsel had concluded their arguments, Judge Wing delivered his charge to the jury. He reviewed the history of the case, but forebore to summarize the evidence, referring the jury to the printed transcript that was made available to them. He

lectured them with all the usual admonitions to impartiality and spelled out the usual legal precepts that were to guide them. On the technical questions raised by counsel in the course of the trial, he ruled against the defense. He admitted that, in law, Gay's declarations were evidence neither of his guilt or that of his accomplices. The defense had erred, however, in waiting too long to object to them and it was now too late to strike them out. Presumably, the defense should have objected when the declarations had been first introduced in evidence after Gay's death. The testimony of Wolliver and other railroad spies who were clearly accomplices in some of the crimes committed in Jackson County was valid, because they had dissociated themselves from the defendants some time before the arrests. As to the impeachment of Phelps, Judge Wing told the jury that any evidence of his reputation for truth based on what was said of his testimony at the trial was not admissible. Further, if some witnesses said they had not heard Phelps' reputation discussed at all, nothing could more clearly uphold and establish it. Finally, the judge warned the jury to ignore the counsel's appeals to their emotions. If the Michigan Central Railroad were indeed a monopoly buying up judges and juries, that fact ought to have nothing to do with the decision in this case. "Large interests are dependent on your verdict," Wing reminded the jury, only to ask them to dismiss that consideration from their minds. He emphasized that no thought of the consequences must be allowed to influence their verdict, which must be one they could reasonably arrive at on the basis of the evidence and not one of whose truth they would have to swear.

On September 25, at 11:30 A.M., the case went to the jury. The jurors, according to one report, started their deliberations with prayer, at the suggestion of one of their number who found himself bewildered by the impenetrable jungle of conflicting evidence and dismayed by the importance of the case. That evening, more than nine hours later, the jury returned with a verdict. It found twelve of the defendants guilty as charged and exonerated the remaining twenty, recommending two of the guilty ones, Erastus Smith and Dr. Ebenezer Farnham, to the mercy of the court. The next morning, the prisoners, surrounded by their families, were brought into court to be sentenced. Their lawyers, in a last-ditch maneuver, moved for a new trial and for suspension of sentence

for a short time, but both motions were overruled. Judge Wing then asked the guilty defendants why sentence should not be passed on them. Some arose and protested their innocence. The judge in turn lectured them severely on their crime and pronounced sentence. Ammi Filley and Orlando Williams received ten years at hard labor in the state's prison at Jackson. William Corwin, Eben and Richard Price, Andrew J. Freeland, Dr. Ebenezer Farnham, and Aaron Mount were sentenced to eight years each, and the three Champlin brothers, Lyman, Erastus, and Willard, and Erastus Smith, to five years each. All twelve were then taken to Jackson prison by a special train provided by the Michigan Central Railroad.<sup>84</sup>

The verdict was received by the Detroit press with gratitude that the city's reputation as a "Christian community" had been upheld against the attacks of base criminals. In Jackson, Editor De Land, in the *Citizen*, expressed his surprise and, he believed, that of the entire community. He felt that truth and justice had been "cheated of their prey," that the wrong men had been convicted. In explanation, he could only conclude that not even "great legal talent could prevail against adverse public opinion backed by the almost . . . almighty power of a monied corporation." And he later cited the *Ypsilanti Sentinel*, the *Jonesville Telegraph*, and the *Battle Creek Journal* as sharing his opinion.<sup>85</sup>

At this distance in time, it matters little whether the defendants were guilty or not. It is more important to view the trial as an example of the way in which the railroad company moved to defend itself against its enemies. The company officials urgently needed and were determined at all costs to secure a conviction in order to halt the attacks on the trains in Leoni and Grass Lake townships. That conviction, they were certain, could not have been gotten in Jackson County in the face of a hostile public opinion. After the depot burned and Phelps presented them with evidence that the Leonians were responsible for the fire, Brooks, Joy, and Clark eagerly seized the opportunity to try the road's enemies in another, more friendly jurisdiction. With a largely favorable press and public opinion, they pushed their advantage to the limit. The prosecution lawyers successfully appealed to the patriotism and sense of social order of the jury of Detroit businessmen and politicians and convinced them that the defendants, who were clearly

guilty of criminal offenses in Jackson County, could reasonably be presumed to have burnt the depot in Detroit. The whole trial thus seems to have been part of a larger conflict of force between the Michigan Central and the farmers of Jackson County rather than a legal action of the people of the state of Michigan against some criminals who had burnt down a building. And the triumph of the company was signalized when Joy, after having paid Van Dyke and Van Arman \$2,000 each for their services, and lesser sums to the other lawyers, rewarded Prosecuting Attorney Stuart with the sum of \$500 for his services to the state.<sup>86</sup>

The feeling will not down, nevertheless, that the defendants had not burnt the depot. To a layman unversed in the law, it seems that the voluminous and conflicting evidence does not prove beyond a reasonable doubt that Fitch and company were guilty of the crime with which they were charged. And subsequent events, too, raise some doubts about the justice of the jury's decision.

Four months after the trial, in January, 1852, the Michigan Central shops in Detroit were destroyed by fire, and two years after that, the passenger offices also burnt down. These later fires were undoubtedly accidents, contingent hazards of the early days of railroad operations. Was it not likely that the earlier fire in the freight depot was of similar origin and that no crime had been committed at all?<sup>87</sup>

Almost two years after the trial, Erastus Smith, one of the convicted defendants, was pardoned and after his release, made out an affidavit, which was published in Burnett's Grass Lake newspaper, in which he revealed in great detail his relations with Phelps before the arrests. Smith affirmed that he had been duped by Phelps and had had no connection with the burning of the depot. He declared that Phelps had approached him many times to swear falsely and involve Fitch and the others in the crime. Phelps had also suggested that the two of them go to Michigan Centre and talk to the boys at Filley's tavern "about something, no matter what," while he, Phelps, would take notes. Thus, the arch-plotter craftily argued, "one of us could talk and the others could swear that they saw it, and in this way, we can back one another up." When Smith refused to go along, insisting that he was "not smart enough to go into such an operation as that," Phelps retorted, "God damn it, you are smart enough to tell a story and stick to it," adding that

that was all Smith had to do. He, Phelps, would make the statements and write them down and Smith would swear to them. Smith still refused, but was present at a meeting with Gay when when the latter agreed to go into the scheme with Phelps. Later, he received other propositions from Phelps, such as to pass counterfeit money, but declined these too. The next thing he knew he was arrested with Gay. The clear implication of Smith's whole story was that Phelps had turned on him when he had refused to join the conspiracy and had had him arrested so that he could not reveal the sordid details of the plot on the witness stand. It is, of course, possible that Smith concocted this version of his relations with Phelps to put his own role in the best possible light, and present himself as a victim rather than an accomplice of Phelps, as Seward had suggested in his closing address. Whatever Smith's role, it is not unreasonable to suspect that Phelps had been guilty of perjury and subornation of prejury as part of his plot to swear the Leoni people to jail.<sup>88</sup>

In a broader sense, all the actions of the railroad company in this savage conflict may perhaps be understood more clearly in the light of contemporary business policy. Superintendent Brooks conceived the role of the company as one of pioneer development in a new land involving risks for which the investors were to be duly paid. He and his advisors accepted no broad social responsibility other than the efficient and profitable transportation of people and goods. The public as consumer or shipper or as voter entered little into any considerations of policy. The result was a shortsighted ruthlessness that accorded ill with the populist American ethos and inevitably brought heated protest, which Superintendent Brooks felt justified in ignoring. Not until the company felt that its strategic position in the state legislature as against rival pressure groups was threatened, did it act to turn aside and blunt the edge of protest. It thus received its first limited lesson in the conduct of public relations, a subject in which American industry was to undergo a long and expensive process of education. The Michigan Central in the 1850's faced only its worried political henchmen who advised it to mollify public sentiment if continued favorable legislative action was expected. Later American corporations were to face continuous bureaucratic regulation by self-acting defenders of the public interest brought into being by the clamor

of a mass electorate. American industry today has, in response, evolved in its publicity a rationale of social utility designed to minimize positive regulation. The Michigan Central, attacked by a combination of antimonopoly opinion and rival railroads, had to backtrack on its intransigence and resort to conciliation in order to protect its favored economic and political position in the state.

In Jackson County, outraged feelings and political strategy combined to keep alive the animus against the Michigan Central. The Whig *American Citizen* kept sniping at Brooks and the railroad and their political allies. Whatever the specific occasion, whether attacking the company's political influence or bringing charges of monopoly, it lost no chance to drag in the fate of the convicted twelve and the martyred Fitch. Once, it concluded a report of a train crash in which many westbound immigrants had been killed with the reminder that other victims of the company's greed and overweening lust for power were also languishing in state's prison. Local excitement and hatred flared up to a new intensity late in 1852 around the person of Henry Phelps, who made the mistake of showing his face in Jackson County. While visiting friends in Grass Lake, he was arrested on a warrant sworn out by the indefatigable Burnett and charged with conspiracy to convict the men of Leoni. In the face of a loud clamor to jail the traitor and informer, the railroad station agent at Jackson hired a lawyer to defend him, reporting to Detroit that "all Leoni and Michigan Centre is after [Phelps]," and asking if the company wished to undertake the defense. The company evidently did, for it supplied the heavy bail of \$5,000 fixed by the local justice, "a hot anti Rail Road man," according to the agent. The Jackson County grand jury indicted Phelps for conspiracy and the trial was set for March, 1853. When the case came up, the company exerted itself to get its employee off. Phelps' lawyer asked for a change of venue to another county. The judge, after some hesitation based on his fear of the public reaction, was prevailed upon to grant the motion and the case was transformed to Washtenaw County. Then, the prosecuting attorney for Jackson County, Austin Blair, was persuaded "to slide the whole thing by quietly" by Moses A. McNaughton, a Free Soil state senator from Jackson, acting on behalf of the railroad. McNaughton, in reporting on the negotiations to

Joy in Detroit, explained that Blair was honest and could not be bribed, but since "his ambition far exceeded his avarice . . .," he could be appealed to on that basis. Blair obligingly dropped the case against Phelps on the ground that the indictment was technically deficient, and the latter was for the moment safe from the toils of his enemies. A year later, Van Dyke advised Joy that Phelps had better disappear from the Michigan scene altogether, at least long enough for the statute of limitations to operate, because otherwise, the "Jackson County patriots" would continue to hound him and the company would be put to great expense to protect him.<sup>89</sup>

"Has anyone sounded Burnett as to whether he can be induced to haul off?" McNaughton had asked Joy in exasperation while arranging for Phelps' rescue. For it was the irrepressible lawyer from Grass Lake who had emerged as Fitch's successor as the gadfly of the opposition to the railroad in Jackson County. After his acquittal in the trial, Burnett had seemingly taken a vow of eternal hostility to the Michigan Central and its officials for what he felt was their baseless persecution of innocent men and devoted himself to proving that justice had miscarried. It was he who had hounded Phelps with arrest. And in January, 1853, he changed his vocation and embarked on a career as publisher and editor of a fortnightly newspaper, *Public Sentiment*, dedicated to the cause of his comrades who were still in jail. "Five months imprisonment," he declared, "has given us a keen and fiery disposition," and every issue of the paper, which appeared for more than a year, was filled with slashing attacks on the railroad company and everybody connected with the trial. As the self-proclaimed defender of justice, Burnett charged that the great railroad conspiracy was in fact a conspiracy against the men of Leoni for a crime which was never committed; that the company's agents and spies had been guilty of kidnapping, arson, and perjury as well as conspiracy; that Superintendent Brooks knew that Phelps' testimony about the burning of the depot was false and paid for in "railroad gold"; and that Fitch had been murdered under color of law at the instigation and by the agency of the Michigan Central. To support his charges, Burnett reviewed and analyzed the evidence brought out at the trial with his sharp lawyer's mind and published new damaging evidence and displayed altogether, as one contemporary later re-

membered, "an acumen, audacity, and mendacity that astonished the bench and bar of the whole state." Fearless and even reckless in his exposures of the alleged machinations of Brooks and Stuart, he was threatened with a libel suit but managed to stay clear of the law. In addition, Burnett struck out at the railroad as a monopoly whose persecution of its opponents was only part of a general policy of ruthless exploitation of the people of Michigan. Any action against the company, any expression of hostility anywhere in the state, found a place in *Public Sentiment* alongside of his own highly vituperative excoriations. To some, like the editor of the *American Citizen*, it seemed that Burnett had gone too far. De Land, for all his sympathy for the cause, editorially rebuked his colleague from Grass Lake for reflecting unjustly on the reputation of individuals, even hinting that he was close to blackmail, and in August, 1854, obligingly reported that *Public Sentiment* had ceased publication.<sup>90</sup>

One of Burnett's chief aims in his foray into journalism had been to win a pardon for the convicted "conspirators" who were serving their terms in Jackson prison. And despite or even because of his dogmatic one-tracked sensationalism, he did perhaps as much as anyone to bring about this end. There had been some sentiment for a pardon right after the trial, but nothing came of it. Superintendent Brooks was reported as saying that "it had cost \$50,000 to convict these men and that he would not consent that the governor should pardon a single man." As the issue was thrown into the political pond and spread wide circles of antirailroad sentiment, the company's officials became more seriously concerned with the matter. In the gubernatorial election campaign of 1851, the Whigs and the Democrats charged each other's candidates with promising, if elected, to pardon the "conspirators," and with posing as railroad men in Detroit and antirailroad men in Jackson County. The incumbent Democrat won the election, but Townsend E. Gidley, the Whig candidate who lived in Jackson County, won his home county, solely because the voters in Leoni and Grass Lake townships, who had the year before given the Democrats small majorities, now turned on the railroad-dominated administration and gave large majorities to the Whigs.<sup>91</sup>

The next year, in the First Congressional District, which included Wayne, Livingston, Washtenaw, and Jackson counties,

David Stuart, Democrat, opposed William A. Howard, Whig. As far as Jackson County was concerned, the contest was one between the prosecuting attorney who had sent the innocent "conspirators" to jail and the man who had courageously defended them. According to the *American Citizen*, it had been necessary to offer large sums of money "to conciliate the opposition of certain prominent democrats in this county to Stuart." Stuart realized his handicap and worked hard to overcome it. He signed, in company with prominent local citizens, a petition to the governor for the pardon of the prisoners. He personally tried to mollify the antirailroad men. He visited Benjamin F. Gleason, one of the defendants who had been acquitted, and who was a Democrat, and asked him to vote for him and tell others to do so. Stuart argued that it was he (Stuart) that had secured the acquittal of some of the "conspirators" and now sought a pardon for the rest. He promised Gleason a job with the state. The visit backfired when Gleason wrote a letter to the *American Citizen* revealing Stuart's machinations and bitterly attacking him. He declared:

Now he is fooled, for I cant lie for him, after being rode and made a cripple of by his lies, I cant vote for him. I defy him and the Michigan Central Railroad Company to fetch an illegal act of mine, done to him or that company.

Gleason went on to proclaim the innocence of all the defendants and the falsity of the charges against them. "And you (Stuart) know it . . .," he concluded, "and if you are an honest man, you will come out and tell the truth. That we ask at your hands before we can vote for you." Stuart's supporters were more successful in getting a letter from Orlando Williams, still serving his ten-year sentence, urging his friends to work for the Democrat, because if elected he would get a pardon for the prisoners. Stuart won the election because Wayne and Livingston counties gave him large majorities, but Jackson County went to Howard, even though it gave Franklin Pierce, the Democratic presidential candidate, a majority over Winfield Scott. Of course, many Jackson County voters, who shared some of Abel F. Fitch's antislavery sentiments, also voted for Howard because he freely expressed such views. In the next congressional election, in 1854, Stuart was soundly beaten by Howard, who this time ran as a candidate of the newly organized Republican Party.<sup>92</sup>

The campaign for a pardon for at least three of the prisoners against whom there had been little or no incriminating evidence came to a climax when the legislature met in January, 1853. Governor Robert McLelland had been favorably considering the petition presented the previous fall and was awaiting the session to issue a pardon. Additional petitions from almost one thousand legal voters of Oakland and Jackson counties were presented to the House and Senate requesting a pardon for the "Central Railroad prisoners." Joy himself, faced with mounting attacks in the legislature on the company's monopolistic privileges, finally saw the wisdom of pardoning some of the "conspirators." He and Superintendent Brooks had talked to three of them in jail and gotten assurances from them that, if pardoned, they would not renew their attacks on the railroad. Joy realized, too, how tenuously implicated in the crime these men had been and, above all, that a pardon "would have a tendency to obliterate those feelings which unhappily seem to prevail to a considerable extent in that portion of the state against the company." At this point, progress bogged down in the political jockeying connected with the fight in the legislature between the Michigan Central and Michigan Southern forces. A special committee of the House had been appointed to consider the numerous petitions and report on them. The committee, in a move to embarrass the governor and the Michigan Central, issued a report attacking the entire prosecution of the conspiracy case and presented a resolution recommending a pardon for *all* the "conspirators." A motion to adopt the report and the resolution and print five hundred copies was passed 39 to 23. On reconsideration, however, the house reversed itself and laid the matter on the table by a vote of 46 to 20. There the matter rested, until March 4, when Governor McLelland, just before resigning to take up his post as Secretary of the Interior in Pierce's cabinet, issued a pardon for Farnham, Erastus Champlin, and Smith. In support of his actions the governor cited the following: the favorable application of the Michigan Central Railroad and its attorney, James F. Joy; the recommendation of David Stuart and prominent citizens of Jackson County; the petitions of more than 2,500 citizens; and finally, the good behavior of the prisoners.<sup>93</sup>

After the prison gates had swung open for the first three "conspirators," the pardon of the rest soon followed. Governor Andrew

Parsons, McLellan's successor, pardoned one prisoner in October, 1853, and five more in December, 1854. The reasons he gave were essentially the same as McLellan's: the petition of thousands of people, the request of prominent citizens of Jackson County as well as David Stuart and the attorney of the Michigan Central, plus the recommendation of the jury that had convicted them. The governor also cited "the deep interest which reliable men of all parties and interests have taken in these cases, and the general prevailing opinion that the ends of justice have been fully met." Ammi Filley and Orlando Williams, who had received the longest sentences, had to wait for their freedom until the victorious Republican governor, Kinsley S. Bingham, came into office.<sup>94</sup>

The policy of conciliation, thus begun in 1853, also included the payment of indemnities to some of the defendants who had been acquitted at the trial. Before authorizing this step, Joy had a thorough investigation made to be sure that none of them had been guilty of any offenses against the railroad property or had any guilty knowledge of such. And when Wilbur F. Storey, editor of the Democratic *Jackson Patriot*, who had made the investigation, further assured him that "the effect on the public mind would be salutary," Joy made some financial restitution to them "for the lost time and other sacrifices arising from their arrest and detention." He was careful to insist, however, that this action was entirely gratuitous and that, as of right, these men were not entitled to any compensation.<sup>95</sup>

It was at this time, too, that Joy entered into the arrangement with Senator Moses A. McNaughton of Jackson to act as his secret representative and adviser in matters involving the railroad in Jackson County. McNaughton, it is important to note, was not an administration Democrat but a Free Soiler who joined the fusion Republican Party the following year, and his employment reflected the company's growing concern with the political revolution then going on in Michigan. McNaughton, it will be recalled, arranged for the dropping of the case against Phelps. He had also urged on Joy the wisdom of procuring a pardon for the "conspirators" solely as a matter of policy, to mollify public feeling. After the first pardons had been issued, the senator also furthered the railroad's new policy of conciliating the opposition by arranging with De Land, the antirailroad Whig editor of the *Jackson American Citizen*, to

publish a favorable article or two in his newspaper in return for a payment of fifty dollars. "With the *ready*," McNaughton assured his employer, "I can do anything I please."<sup>96</sup>

The pardon of the conspirators and the payment of indemnities, if meant to assuage outraged sentiments of neighborly loyalty and blunt the charges of injustice, were something less than effective. The old hurt continued to rankle, and a lively hatred of the Michigan Central still flourished in Leoni in 1854.<sup>97</sup> The policy of conciliation also failed because the feeling against the railroad had become something more than local resentment over the persecution of the innocents. It had burgeoned once more into a widespread opposition to the company as a monopoly which still refused to pay fairly for the cattle its trains killed, which fixed higher rates for short hauls than for long, and which prevented new and necessary railroads from being built in the state. Tangled in this skein of the antimonopoly movement was the feud between the Michigan Central and its rival, the Michigan Southern Railroad, itself a giant corporation using every political and economic weapon to attack and gain an advantage over its competitor. Out of this juncture of interests and ideals emerged the movement for the enactment of a general railroad incorporation law to break the power of the Michigan Central Railroad.

The demand that the railroad be made to pay for damages to property was heard again when the legislature met in 1853. As a public meeting in Birmingham stated in a resolution: "It is the duty of the law-making powers of the state to provide a code of laws, which will enable the most humble citizen to obtain his just right of property against incorporated wealth." Shoemaker's old bill, defeated in 1851, providing for a minimum of protection of property along the line of the railroads, was introduced again. This time, it was the House that passed the bill, with only one dissenting vote, while the Senate turned it down. Not until 1855, when the legislature was under the control of the Republicans, were laws passed requiring the Michigan Central and the Michigan Southern railroads to take safety measures at all crossings and fence the right of way and making the companies liable for all cattle killed until the fences were erected.<sup>98</sup>

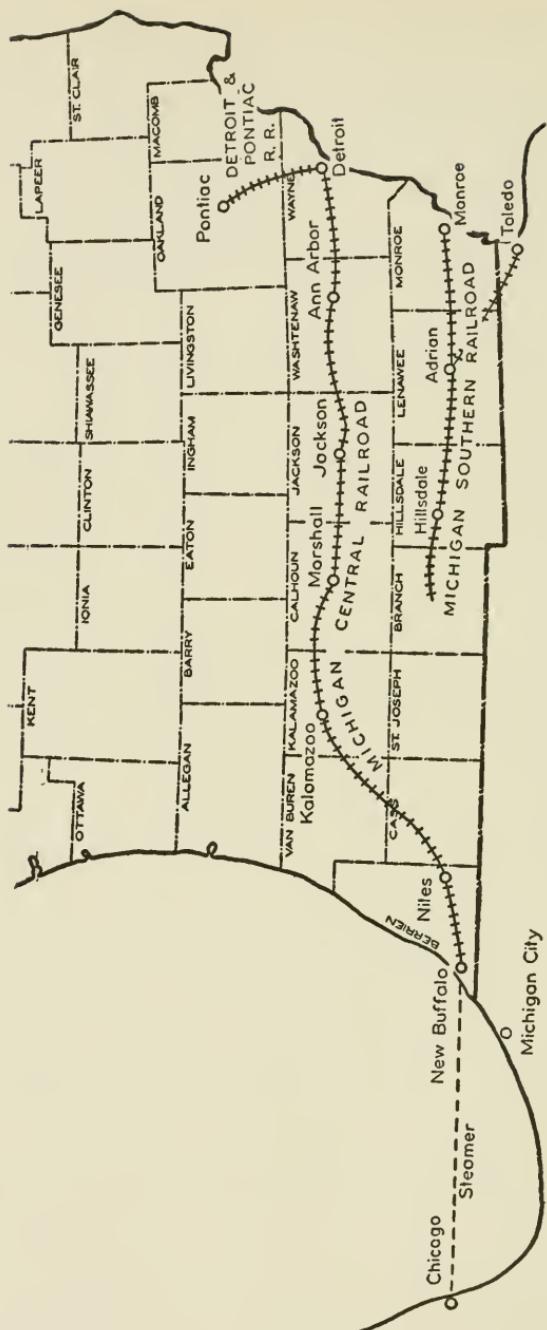
Criticism of the high freight rates that the Michigan Central charged farmers along its line also continued to be heard and led

to a renewed demand for the construction of a branch line between Jackson and Adrian as the only way of bringing down the rates. Businessmen and investors of Jackson who were financially interested in the Grand River Valley Railroad, which they hoped would open up the interior of the state north of the Central Railroad and make Jackson a commercial center, also advocated the construction of the Jackson branch in order to connect their proposed line from Grand Rapids to Jackson with Adrian, Toledo, and the East. And all efforts were now concentrated on getting the Michigan Southern to build the Jackson-Adrian link, as it was legally required to do by its charter, but to no avail. The *American Citizen* faithfully supported the campaign through 1852 and warned that if the line were not built, "the Central Company [could] still filch the life blood from the business veins of the community and oppress and imprison and martyr our citizens at will." Not until the spring of 1853 did the directors of the Southern Railroad agree to undertake the construction of the Jackson branch, but, as will presently appear, entirely for their own reasons. Amos Root, a Jackson merchant and big investor in the Grand River Valley Railroad, who was now a member of the lower house of the legislature, was the leading spirit behind the negotiations and finally got Elisha Litchfield, one of the Southern directors, to give his word that the line would be built in three years. Litchfield insisted, however, that his company be given without cost the right of way extending ten miles south of Jackson. The eager promoters agreed and three of them immediately gave personal bonds in the amount of \$15,000 to secure the right of way. They started to buy up the necessary land, opened books for the sale of additional Southern Railroad capital stock to finance the project, and advertised for bids on construction material. At this point, the venture ran head-on into the opposition of the Michigan Central, whose agents bought up strategic parcels of land along the proposed right of way. This obstacle, too, was finally overcome and the land was secured, though at a cost of about \$5,000 greater than planned, and several hundred men were put to work grading the right of way. To rally public support to the venture and raise additional funds, plans were made to hold a large mass meeting in Jackson on August 20, 1853.<sup>99</sup>

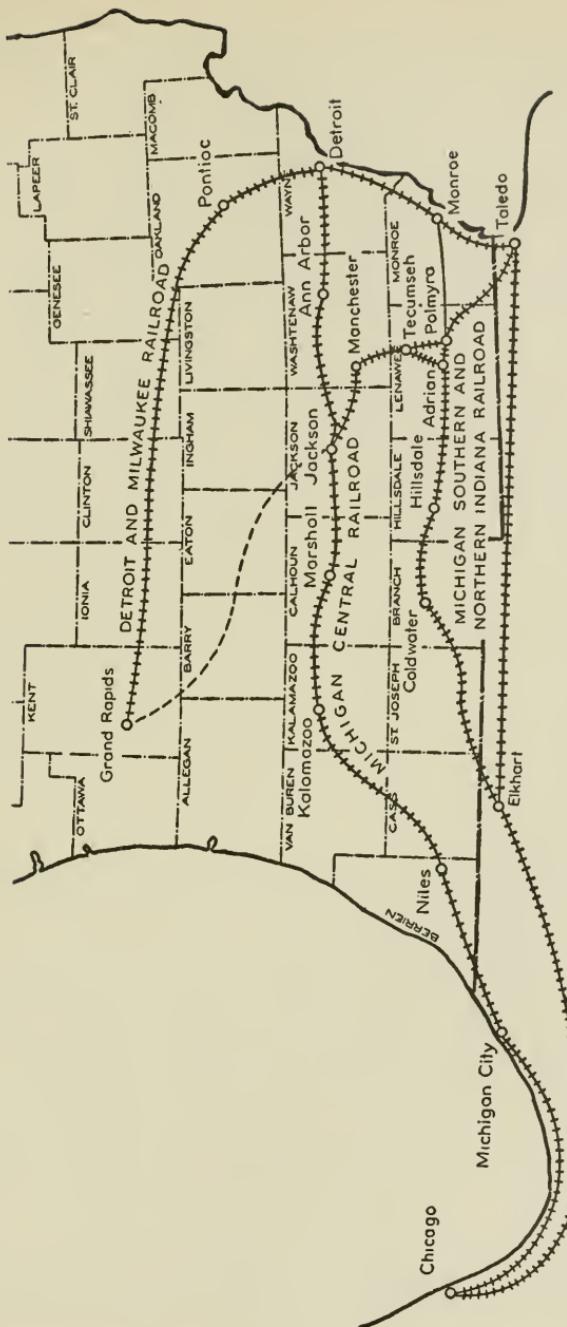
On the appointed day, two thousand citizens met at the court-

house in Jackson, with delegates attending from Lenawee, Hillsdale, Ingham, Eaton, Barry, Ionia, and Jackson counties. Speeches and resolutions all strongly demanded the construction of the Jackson branch and the Grand River Valley Railroad. The courthouse rang with attacks on the monopoly maintained by the Michigan Central for its own benefit and that of the city of Detroit at the expense of the farmers of central Michigan. Singled out for attack were the measures taken by the Central Railroad to prevent the construction of the Jackson branch, which, it was declared, were cause enough for the forfeiture of the company's charter. It was resolved, too, that if the two proposed lines could not be built under the existing special charters, the people should seek passage of a general railroad law by the terms of which any group of investors could build any lines they wished and could finance. The meeting closed with the appointment of a committee on permanent organization to carry on the good fight, another to raise additional funds, and a third to see the governor about the forfeiture of the Michigan Central's charter.<sup>100</sup>

The company did not wait long to take countermeasures. Within the week, Superintendent Brooks and Joy filed a bill of chancery in the Wayne County Circuit Court in Detroit, complaining that the construction of the Jackson branch without their consent violated the terms of the company's charter and would tap its business and destroy its profits, and asking for an injunction to halt the work on the proposed line. In support of the plea, the bill cited section 5 of the company's charter, which provided that no railroad could be built from the eastern or southern boundary of the state, any part of which came within five miles of the line of the Michigan Central. The defense, representing the Michigan Southern and the backers of the Jackson branch, argued a preliminary motion that the suit should not have been brought in Wayne County but in Jackson County, where the alleged violation had taken place. After this motion was denied, the defense went on to argue that the Michigan Southern was only doing what it was required by its charter to do, that is, complete the line from Adrian to Jackson. Judge Samuel Douglass maintained, however, that the actions of the defendants were clearly in conflict with the charter of the Michigan Central and in his decision ruled in favor of the complainants and granted the injunction. The work on the Jack-



MICHIGAN RAILROADS — 1849



MICHIGAN RAILROADS – 1857

son branch was thus effectively stopped and its promoters could now look forward only to a general railroad law for relief.<sup>101</sup>

The directors of the Michigan Southern had come perforce to the same conclusion. The two rival railroads had entered Chicago in the spring of 1852 and were engaged in a running fight to capture the through east-west traffic. Joy and Brooks labored mightily to gain an overland connection through Canada with Buffalo and the East to match the Southern's lake shore line. Late in 1852, the Southern carried the fight to the enemy by seeking an amendment to its charter allowing it to extend its line from Monroe to Detroit. Such a line would tap the Central's business and feed it, through the already-built Monroe-Toledo spur, into the Southern's through route from Chicago to Buffalo. When the Southern presented its petition to the legislature in 1853, Joy immediately wheeled his minions into line against it. The Detroit *Free Press* attacked the proposal as a blow to the commercial interests of Detroit and a boon only to the through shippers of other states. The lawmakers took no action and gave Joy time to counter-attack with a petition for an amendment to the Michigan Central's charter to build its own line from Detroit to Toledo via Monroe. Faced with a deadlock in its efforts to get into Detroit from Toledo by an amendment to its charter, the Southern Railroad shifted its tactics and once again swung behind the movement for the passage of a general railroad incorporation law.<sup>102</sup>

Sentiment for such a law was steadily growing. Its popularity was reflected in Governor McLelland's annual message to the legislature in 1853. The Democratic governor recommended the passage of the law because "the growing necessities and increasing business of the state require the construction of new lines of railroads." The problem of amending the special charters to extend and change the lines of the existing roads, he added, could also be met by a general law. And even the correspondent of the *Free Press* reported from Lansing that most of the members of the legislature were in favor of the law in order "to open the way for the full competition of capital" and thus bring cheaper rates and other benefits.<sup>103</sup>

When Joy heard from his agents in Lansing that the Southern Railroad was pushing the general railroad law, he marshaled all his forces once again to oppose it. In January, 1853, the Southern's

agents organized a large public meeting in Detroit to support the law, as the only way to give Detroit a connection with Toledo. Joy himself and his colleagues appeared in person to counteract the move, but the Southern supporters gained the day and a favorable resolution was passed. The second day, however, Joy and Van Dyke were successful in getting the meeting to reverse itself and approve a resolution opposing a general railroad law and endorsing an independent line to Toledo. Subsequently, the two rivals arranged meetings in other parts of the state to support their respective positions. The *Free Press* ran a series of long articles which argued that the law was detrimental to the interests of Detroit and would encourage unhealthy speculative ventures. The upshot of all these moves and countermoves as well as legislative intrigues was a victory for the Michigan Central forces. The House passed the law but it was lost in the shuffle of unfinished business in the Senate. It was at this point that the Southern Railroad agreed to build the Jackson branch in a flanking attack on their rivals, only to see this effort too stopped by the courts.<sup>104</sup>

The victory of the Michigan Central, however, was only temporary, for the tide was running strongly against it. The supporters of the general railroad law greeted the setback in the legislature with charges that it had fallen victim to the rapacity of the Central Railroad and that Detroit and the railroad had defeated the wishes of the rest of the people of the state. They resumed the agitation at the end of 1853 with a series of public meetings in Detroit and Adrian culminating in another great mass meeting in Jackson on December 28. At these meetings, Governor Andrew Parsons was requested to call a special session of the legislature to act on the general railroad law in accordance with the wishes of the people. The governor managed to resist the pressure, explaining that there was no urgency in having the law passed, since the state of the money market was such that no new railroads could be built at this time anyway.<sup>105</sup>

By 1854, even the *Free Press* was admitting editorially that most of the people wanted a general railroad law. And the issue became one of the ingredients in the bubbling political cauldron in the state. The Free Soil Democrats, meeting in convention in Jackson on February 22, 1854, wrote into their platform a plank on state affairs which called for a prohibition law, free schools, and a "gen-

eral law under which capital may be associated and combined for the prosecution of works of public improvement and of various industrial pursuits." The Detroit *Daily Democrat*, the Free Soil organ, later spelled this out to mean that the party favored a general railroad law. When the merger between the Free Soil Democrats and the antislavery Whigs took place the following July under the oaks in Jackson, the platform of the new Republican Party also demanded the passage of such a law. This plank was not, however, adopted without opposition. Jacob M. Howard, of Detroit, chairman of the resolutions committee, presented the majority report of the committee to the convention which said nothing of a general railroad law. It was Austin Blair of Jackson, also a member of the committee, who presented a minority report embodying planks on state affairs calling for reform in the administration of the state's finances and a general railroad law. This last resolution stated: "that in our opinion the commercial wants of the State require the enactment of a general railroad law, which, while it shall secure the investment, and encourage the enterprise, shall also guard and protect the rights of the public and of individuals . . ." Blair's resolutions were considered too radical by the sixteen members of the committee and had not been accepted. When Blair presented his minority report to the convention at large, the chairman, David S. Walbridge of Kalamazoo, considered by some a tool of the Michigan Central, refused to put the question to a vote. Trying to bury the resolutions, he unceremoniously left the chair and started for his hotel before the convention had adjourned. Angry delegates pursued him, brought him back and forced him to put the question, which was then carried by a large majority. Two months later, the Democratic state convention also included a plank for a "judiciously framed" general railroad law in its platform.<sup>106</sup>

Although both parties had officially come out in support of the general railroad law, the issue was overshadowed in the ensuing campaign by the heated arguments over slavery. In Jackson, however, the *American Citizen* repeatedly urged the election of Austin Blair, who was running for the Senate on the Republican ticket, as a true supporter of such a law. It declared that the election would decide whether Michigan would have the law or not and accused the Democrats of giving it only sham support.<sup>107</sup>

When the Republicans swept the state in November, the way was cleared for the passage of the law in the new legislature. Even Governor Parsons, in his last message before going out of office, now recommended the law. The new governor, Kinsley S. Bingham, claimed in his inaugural address that the law was demanded by nearly unanimous public sentiment and was necessary for the rapid development of the state's economic resources. Austin Blair, now the majority leader in the Senate, introduced the bill and managed its progress through the upper house. In a last ditch stand, James A. Van Dyke, now counsel for the Michigan Central, presented a memorial to the Senate, opposing the law and claiming that it violated the terms of the company's charter by allowing competing railroads to be built. He argued that the company had paid two million dollars to the state, not for the mere physical property and tangible assets, but for the valuable but intangible monopoly privileges. If the state was weary of the contract into which it had entered, he queried, why did it not repurchase the railroad at the terms provided in the charter? The Senate ignored Van Dyke's appeal and passed the bill unanimously. Before the month was out, it had passed the lower house too and become law.<sup>108</sup>

The new law was certainly no panacea for Michigan's railroad problems. It did, however, register adequately contemporary thought on this important economic issue. Under its terms, any group of investors who met the minimum conditions could secure a charter and organize a corporation to build and operate a railroad. Railroad companies thus received the same privileges that had been extended to plank road, telegraph, and mining companies in 1851 and to all manufacturing enterprises in 1853. Although the state thereby relinquished in large part the right to direct economic enterprise, it did not abandon its right to regulate such activities. It is significant that the opposition to the general railroad law had not been based on the principle of *laissez faire* but on the practical arguments that it favored the Michigan Southern Railroad and thus harmed the interests of Detroit. Only Van Dyke had, when it was already too late, brought up the issue of breach of contract. And the regulations written into the new law, though relatively ineffective because little or no means of enforcement were provided, were positive enough. All new railroads organized under the act were required to install such safety meas-

ures as bells on locomotives, a steam whistle to be sounded before all grade crossings, "stop, look, and listen" signs at the crossings, fences along the right of way, and special farm crossings with cattle guards where necessary. Maximum passenger fares were fixed, though at the high rate of three cents a mile. The legislature was also given the right to reduce all rates but not to an extent that would produce less than a 15 per cent annual return on capital stock paid in.<sup>109</sup>

The passage of the law in 1855 was followed in short order by the construction of the new lines previously proposed. The Jackson branch was completed to Manchester within the year and to Jackson in 1857 under the auspices of the Southern Railroad, by then known as the Michigan Southern and Northern Indiana. The Grand River Valley Railroad was completed in 1870. Stockholders of the Southern Railroad also organized the Detroit, Monroe and Toledo Railroad which connected its two termini in 1857. But the much hoped for competition between the two major rival lines did not materialize. In 1857, the Michigan Central and the Michigan Southern and Northern Indiana entered into an agreement to pool all through passenger and freight traffic on a percentage basis.<sup>110</sup>

After the passage of the general railroad law, public agitation and antagonism faded temporarily in the sequel of war and boom, to revive again in the crisis of the 1870's. And time and circumstance removed the chief actors in the great railroad conspiracy from the scene. Some of the key witnesses at the trial met sorry ends. Phelps, who had been given a job on the railroad, went to Texas and was killed in a brawl, while Wescott died in Dearborn of delirium tremens. Wolliver succumbed in an Illinois jail where he was serving time for highway robbery. Lake saw the inside of Jackson prison again before he passed on.<sup>111</sup>

Quite different fates befell the railroad officials and lawyers. Superintendent Brooks relinquished control of the operations of the Michigan Central and moved upstairs to the presidency, and he and Joy turned their organizing efforts further west. Darius Clark was rewarded with an appointment as general ticket agent of the Michigan Central Railroad in New York City. He returned to the state once but was quite reticent about the part he had played in convicting the "conspirators." Van Dyke became one of the

lawyers for the Michigan Central in 1852, while Van Arman left for Chicago in 1858 and was there appointed to the legal staff of the Chicago, Burlington and Quincy Railroad, which Joy and Brooks had such a large part in organizing and promoting.<sup>112</sup>

Most of the defendants returned to their homes to spin out their lives in welcome obscurity. But Ammi Filley, embittered and restless, shook the dust of Leoni from his heels and moved to Illinois and then to Nebraska, where he died in the 1880's.<sup>113</sup>

In Jackson County, however, the great railroad conspiracy remained a focus of resentment that was elaborated in the course of time into a legend of injustice and heroism. A directory of the city of Jackson, published in 1869, recorded that the people had outlived the unhappy effects of the railroad troubles, "though the convictions in the minds of the surviving parties as to who was right and who wrong, remain now about the same as then." When a Jackson newspaper in later years retold the story of the arrests and trial, it concluded the account with a touch becoming an ancient epic: "And thus were the ends of justice defeated and money and power and villainous craft triumphed over innocence and helplessness." By that time, the Michigan Central had become "a growing and thriving corporation" which had made mistakes "which wiser members in sober moments have acknowledged and deplored . . ." The spies, Phelps, Gay, Wescott, and Lake, were the villains in this morality play and on them the writer poured his wrath. As for Fitch, he wrote:

Abel F. Fitch died a crushed and heart-broken but guileless man, and an honest Christian gentleman. The fact that the prisoners were all pardoned at the suggestion of the railroad company and their lawyers, that a tender of damages was made to them after being released, and that the witnesses, to this day, all stand convicted for perjury, is, of itself, vindication enough for all.<sup>114</sup>

By 1881, the gray of truth had darkened into the black myth of villainy. A history of the county published in that year told the story of how the spies, "disreputable scoundrels . . . cowards and villains . . . reptiles," had failed to discover any of the culprits who had been obstructing the tracks and had resolved to swear to anything to collect the reward offered by the railroad company. *They* had set fire to the depot in Detroit and then had sworn that innocent citizens living sixty miles away had hired one of them to do it.

At the trial, these scoundrels had been "willing instruments in the hands of the railroad company" and one unprincipled lawyer, Van Arman, who coached them in the art of perjury.<sup>115</sup>

Colonel De Land, onetime editor of the *Jackson American Citizen*, in his history of Jackson County compiled in 1903, repeated the same story. He inveighed against the villainy of the railroad's agents and spies and assured the world "that their victims were in prison for a crime they never committed." And concluded his tale thus: "A beautiful marble monument stands over the grave of Captain Fitch and the story is still told of the wickedness of his taking off."<sup>116</sup>

## NOTES

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For the general accounts of the great railroad conspiracy, see *Michigan as a Province, Territory and State*. . . . 3:319-24 (New York, 1906); Silas Farmer, *The History of Detroit and Michigan*, 1:900 (Detroit, 1884); Alvin F. Harlow, *The Road of the Century*, 223-24 (New York, 1947); *History of Jackson County* . . . , (Chicago, 1881); Charles V. DeLand, *DeLand's History of Jackson County* . . . . 153-60, (n.p. 1903).

<sup>1</sup> For the early history of railroads in Michigan see Harlow, *The Road of the Century*, chapter 10; "James F. Joy Tells How He Went into the Railroad Business," in the Detroit *Free Press*, May 1, 1892, reprinted in the *Michigan Historical Collections*, 22: 297-304 (Lansing, 1894).

<sup>2</sup> *Report of the Directors of the Michigan Central Railroad to the Stockholders, June, 1851*, 31 (Boston, 1851); Memorandum Book, unpage, in the Law Library of the New York Central System, Detroit.

<sup>3</sup> "Annual Report of the Board of Internal Improvements 1845," *Michigan Joint Documents*, 1846, number 4: 11 (Lansing, 1846).

<sup>4</sup> *Niles Republican*, June 2, 16, August 25, 1849; John Gilbert, "The Great Conspiracy," in the *Michigan Historical Collections*, 31:234 (Lansing 1902); George Sedgwick to John W. Brooks, May 12, 1849, Charles Vail to John W. Brooks, May 11, 1849, in Letters Received Superintendent's Office, Michigan Central Railroad, May, 1849, volume 11, in the Archives of the New York Central System, Detroit; Detroit *Daily Free Press*, June 21, 1849; E. Lakin Brown, "Autobiographical Notes" in the *Michigan Historical Collections*, 30:491-92 (Lansing, 1906).

<sup>5</sup> *Marshall Statesman*, June 13, 1849; *Marshall Democratic Expounder*, August 17, 1849; Charles O. Hoyt and R. Clyde Ford, *John D. Pierce, Founder of the Michigan School System*, 134-36 (Ypsilanti, 1905).

<sup>6</sup> The account of the conflict between the farmers of Jackson County and the Michigan Central Railroad is, unless otherwise specified, based on the evidence taken and the addresses made at the trial of the Jackson County farmers, which are to be found in *Report of the Great Conspiracy Case: The People of the State of Michigan versus Abel F. Fitch and Others, Commonly called the Railroad Conspirators . . .*, 3 parts (Detroit, 1851), hereafter cited as *Report*; and in George R. Lilibridge, *Report of the Conspiracy Trial in the Wayne County Circuit Court . . .* (Detroit, 1851), hereafter cited as Lilibridge. These two transcripts of the proceedings at the trial differ somewhat and have been used to supplement each other.

<sup>7</sup> *Grass Lake Public Sentiment*, March 1, 1854.

<sup>8</sup> De Land, *History of Jackson County*, 153.

<sup>9</sup> Detroit *Daily Advertiser*, June 19, 1849; *Grass Lake Public Sentiment*, March 1, 1854.

<sup>10</sup> "Sketch of the Life and Experience of Charles H. Frisbie, for Forty-seven Years a Locomotive Engineer," in C. H. Salmons, *The Burlington Strike*, 473 (Aurora, Illinois, 1889). Frisbie was an engineer on the Michigan Central Railroad in the 1840's and 1850's.

<sup>11</sup> "Sketch of Frisbie" in Salmons, *The Burlington Strike*, 471-72; *Report*, part 1:70; Detroit *Daily Free Press*, June 21, 1849.

<sup>12</sup> Minutes of Directors' Meeting, Michigan Central Railroad, December 24, 1849, in the Archives of the New York Central System, Detroit; John Murray Forbes to Joshua Bates, August 17, 1850, in Letter Book Michigan Central Railroad, in the Archives of the New York Central System, New York; Detroit *Daily Free Press*, July 3, 1849.

<sup>13</sup> Criminal Docket County Court Jackson County, 1848-1856, 26, 27, in the county clerk's vault, Jackson County Building, Jackson; Benjamin F. Burnett to editor, *Ypsilanti Sentinel*, April 27, 1851, cited in the *Jackson American Citizen*, May 7, 1851; *Grass Lake Public Sentiment*, March 1, 1854.

<sup>14</sup> *Grass Lake Public Sentiment*, March 1, 1854.

<sup>15</sup> De Land, *History of Jackson County*, 84, 101, 108, 155, 426; Jackson County Land Records, Deeds, liber 1-6, passim, in Land Record Office, Jackson County Building; Jackson County Circuit Court Docket, 1838, in the county clerk's vault, Jackson County Building; *History of Jackson County*, 402; County Canvass 1850, 1851, in Election Returns 1849-1852, in the county clerk's vault, Jackson County Building; *Jackson American Citizen*, April 9, 1851; United States Census 1850, Population Schedules for Michigan, volume 4, Jackson County, Leoni Township, 118, microfilm in Michigan State Library, Lansing; *Report*, part 2:67, 68; part 3: 231-32.

<sup>16</sup> *Grass Lake Public Sentiment*, May 15, 1853; Abel F. Fitch to [Mrs.] Amanda Fitch, March-June 1851, passim, microfilm copy at Michigan State College of the originals in Michigan Historical Collections, Ann Arbor; Charles E. Barnes, "Battle Creek as a Station on the Underground Railway," in the *Michigan Historical Collections*, 38:282 (Lansing, 1912); *Jackson American Citizen*, October 6, 1850, April 9, 1851; Detroit *Daily Free Press*, April 26, 1851; Detroit *Daily Tribune*, May 22, 1851.

<sup>17</sup> Fitch to Mrs. Fitch, March 21, May 14, 1851.

<sup>18</sup> Fitch to Mrs. Fitch, March 21, 1851.

<sup>19</sup> United States Census 1850, Michigan, volume 4, Jackson County, Grass Lake Township; De Land, *History of Jackson County*, 276; *History of Jackson County*, 334.

<sup>20</sup> De Land, *History of Jackson County*, 404; *Life and Adventures of William Filley* (Chicago, 1867); United States Census 1850, Michigan, volume 4, Jackson County, Leoni Township, 118.

<sup>21</sup> According to Mr. Orrin Blackman of Jackson, the building now standing on the northeast corner of the New York Central Railroad crossing at Michigan Centre is, with some additions and alterations, the original tavern that stood there in 1850.

<sup>22</sup> "Sketch of Frisbie," in Salmons, *The Burlington Strike*, 474.

<sup>23</sup> Gilbert, "The Great Conspiracy," in the *Michigan Historical Collections*, 31:236; Harmon L. Spa[ul]ding to John W. Brooks, September 13, 1850, in Letters Received Superintendent's Office, September, 1850, volume 29.

<sup>24</sup> *Detroit Daily Free Press*, June 7, 1850; *Report*, part 3: 98.

<sup>25</sup> *Ann Arbor Michigan Argus*, July 16, 1851.

<sup>26</sup> De Land, *History of Jackson County*, 154.

<sup>27</sup> *Marshall Statesman*, June 13, 1849; *Marshall Democratic Expounder*, August 17, 1849.

<sup>28</sup> "Annual Message of the Governor 1846" in the *Joint Documents of the Senate and House of Representatives*, 1846, p. 27 (Detroit, 1846); *History of Jackson County*, 477; John W. Brooks, *Reply to a Communication from Mitchell Hindsill Esq. and Others of Kalamazoo Concerning Comparative Rates of Transportation of Freight over the Michigan Central Railroad* (Detroit, 1848); *Jackson American Citizen*, September 19, October 24, November 7, 14, December 5, 1849, January 2, 1850.

<sup>29</sup> *Jackson American Citizen*, March 12, September 24, 1851; Harlow, *The Road of the Century*, 253; *Adrian Michigan Expositor*, March 18, 1851; *Senate Documents 1850*, number 33: 2 (Lansing, 1850); *House Documents 1851*, number 9: 3 (Lansing, 1851).

<sup>30</sup> *Michigan Reports*, 2 Gibbs 259-60; *Jackson American Citizen*, September 24, 1851; *Ann Arbor Michigan Argus*, July 16, 1851.

<sup>31</sup> *Michigan Reports*, 2 Gibbs 261.

<sup>32</sup> For a discussion of this development in another state, see Oscar and Mary F. Handlin, *Commonwealth: A Study of the Role of Government in the American Economy: Massachusetts, 1774-1861*, 194, 261-62 (New York, 1947).

<sup>33</sup> Hoyt and Ford, *John D. Pierce*, 135; *Report of the Proceedings and Debates of the Convention to Revise the Constitution of the State of Michigan*, 1850, 29, 30 (Lansing, 1850); *Debates and Proceedings of the Constitutional Convention of the State of Michigan*, 1867, 1:145, 146 (Lansing, 1867); James V. Campbell, *Outline of the Political History of Michigan*, 538-39 (Detroit, 1876); *Detroit Daily Free Press*, February 11, 1853.

<sup>34</sup> *Report of the Proceedings and Debates*, 1850, 29, 30, 586-90, 734.

<sup>35</sup> *Portrait and Biographical Album of Jackson County, Michigan*, 189 (Chicago, 1890); *Detroit Daily Free Press*, February 17, 1851; *House Journal 1850*, 520, 710 (Lansing, 1850); *House Journal 1851*, 104, 574 (Lansing, 1851);

*Senate Journal* 1850, 262, 470 (Lansing, 1850); *Senate Journal* 1851, 20, 69, 422 (Lansing, 1851); *House Documents* 1851, number 14 (Lansing, 1851).

<sup>38</sup> Report, part 1: 135, 136, 152; part 3: 245; Lilibridge, 79; Fitch to Mrs. Fitch, March 21, 1851; Darius Clark to John W. Brooks, March 21, 1851, in Letters Received Superintendent's Office, March 1851, volume 35; James F. Joy to George F. Porter, March 2, 1850, in Joy Manuscripts, transcripts in the Michigan Historical Collections; Adrian *Michigan Expositor*, March 18, 1851.

<sup>37</sup> Detroit *Daily Free Press*, March 10, March 25, April 2, 1851; Adrian *Michigan Expositor*, April 9, 1850; *Senate Journal* 1851, 234, 305.

<sup>38</sup> Gilbert, "The Great Conspiracy," in the *Michigan Historical Collections*, 31:235; *Marshall Statesman*, December 5, 1848; *Michigan Biographies*, 1:172 (Lansing, 1914); Fitch to Mrs. Fitch, May 11, 1851; Report, part 3: 76.

<sup>39</sup> Clark to Brooks, August 17, August 22, August 30, 1850, in Letters Received Superintendent's Office, August 1850, volume 28; Henry G. Pearson, *An American Railroad Builder: John Murray Forbes*, 37, 38, (Boston, 1911).

<sup>40</sup> Clark to Brooks, August 22, November 1, 2, 1850, in Letters Received Superintendent's Office, August, 1850, volume 28, November, 1850, volume 31; *Grass Lake Public Sentiment*, March 15, 1854.

<sup>41</sup> Report, part 3: 44-45; Fitch to Mrs. Fitch, May 6, 1851.

<sup>42</sup> Clark to Brooks, August 15, 17, 1850, in Letters Received Superintendent's Office, August, 1850, volume 28; Report, part 2: 86-87.

<sup>43</sup> Clark to Reuben N. Rice, March 15, 1851; Clark to Brooks, March 29, 1851, in Letters Received Superintendent's Office, March, 1851, volume 35.

<sup>44</sup> Criminal Docket County Court Jackson County, 1848-1856, 83; Jackson *American Citizen*, November 13, 1850.

<sup>45</sup> Clark to Brooks, February 26, March 21, 1851; James F. Joy to Reuben N. Rice, February 26, 1851; James F. Joy to Brooks, March 28, 1851, in Letters Received Superintendent's Office, February, 1851, volume 34, March 1851, volume 35; *Laws of Michigan*, 1851, number 128.

<sup>46</sup> Clark to Brooks, February 26, 1851, in Letters Received Superintendent's Office, February, 1851, volume 34.

<sup>47</sup> Detroit *Daily Advertiser*, November 20, 1850; Detroit *Daily Free Press*, June 7, 1851; Report, part 2: 7.

<sup>48</sup> See footnotes 45 and 46.

<sup>49</sup> Detroit *Daily Advertiser*, April 21, 22, 1851; Detroit *Daily Free Press*, April 21, 1851; Niles *Republican*, April 26, 1851; Gilbert, "The Great Conspiracy," in the *Michigan Historical Collections*, 31:237-38.

<sup>50</sup> Fitch to Mrs. Fitch, April 21, 1851; Detroit *Daily Advertiser*, April 26, 28, 1851; Jackson *American Citizen*, May 7, 1851.

<sup>51</sup> Report, part 2: 140; part 3: 163, 388; Wayne County Circuit Court Criminal Calendar, November 26, 1847, to February 23, 1878, numbers 1632-36, in Wayne County Courthouse, Detroit; Law Papers, Wayne County Circuit Court, case number 4971, in Wayne County Courthouse, Detroit; Detroit *Daily Advertiser*, April 25, 30, June 5, 1851; Jackson *American Citizen*, May 7, 1851.

<sup>52</sup> The account of the trial is, unless otherwise specified, based on the two reports of proceedings cited in note 6; Detroit *Daily Tribune*, April 29, 1851. The author has searched through the records in the Wayne County Circuit Court record room but the original papers in this trial were not to be found.

<sup>53</sup> Report, part 3: 93, 94; Jackson *American Citizen*, September 3, 1851; Charles I. Walker, "The Detroit Bar," in the *Michigan Law Journal*, 2:9 (January, 1893).

<sup>54</sup> Fitch to Mrs. Fitch, May 11, 1851; Detroit *Daily Advertiser*, May 15, 17, 1851; Detroit *Daily Tribune*, May 16, 1851.

<sup>55</sup> Detroit *Daily Advertiser*, April 21, May 2, 7, 1851; Detroit *Daily Free Press*, April 21, May 26, 1851; Detroit *Daily Tribune*, April 25, 26, 28, May 3, 1851; Jackson *American Citizen*, April 30, May 14, 1851.

<sup>56</sup> Report, part 3: 163; Adrian *Michigan Expositor*, June 3, 1851; Detroit *Daily Advertiser*, May 26, 1851.

<sup>57</sup> Detroit *Daily Free Press*, April 29, 1851; Fitch to Mrs. Fitch, May 14, 1851; Jackson *American Citizen*, May 7, 1851.

<sup>58</sup> Jackson *American Citizen*, September 3, 1851; Detroit *Daily Free Press*, May 30, 1851; Fitch to Mrs. Fitch, May 11, 1851.

<sup>59</sup> Fitch to Mrs. Fitch, May 18, May 25, June 1, 1851; Frederick Bancroft, *Life of William H. Seward*, 1:181 (New York, 1900); Jackson County Mortgages, liber 10, 401, in Land Record room, Jackson County Building. Seward's fee was secured by a mortgage on Fitch's land, which was discharged in 1855.

<sup>60</sup> Fitch to Mrs. Fitch, May 6, May 11, 1851.

<sup>61</sup> The occupations of the jurors were ascertained in Farmer, *History of Detroit and Michigan*, volume 1, using the index; *Shove's Business Advertiser and Detroit Directory for 1852-1853* (Detroit, 1852); Fitch to Mrs. Fitch, May 30, 1851.

<sup>62</sup> Fitch to Mrs. Fitch, April 21, 22, May 6, 1851.

<sup>63</sup> Fitch to Mrs. Fitch, May 6, 14, 18, 1851.

<sup>64</sup> Fitch to Mrs. Fitch, May 11, 14, 25, 1851.

<sup>65</sup> Fitch to Mrs. Fitch, May 6, 14, 18, June 1, 1851; Detroit *Daily Advertiser*, May 22, 1851.

<sup>66</sup> Law Papers, Wayne County Circuit Court, case number 4971, 4976.

<sup>67</sup> Fitch to Mrs. Fitch, May 18, 1851.

<sup>68</sup> Fitch to Mrs. Fitch, May 25, June 29, 1851; Henry Frink and William A. Howard to Brooks, July 7, 1851, in Letters Received Superintendent's Office, July, 1851, volume 39.

<sup>69</sup> Anson De Puy Van Buren, "Sketches, Reminiscences, and Anecdotes of the Old Members of the Calhoun and Kalamazoo County Bars," in the *Michigan Historical Collections*, 11:281 (Lansing 1888); Cyrenius P. Black, "Legal Reminiscences of Forty Years," in the *Michigan Historical Collections*, 35:138-39 (Lansing, 1907).

<sup>70</sup> Lucien B. Proctor, "William H. Seward as a Lawyer," in the *Albany Law Journal*, 35:284-89 (April 9, 1887); Bancroft, *Life of Seward*, 1:184; Worthington C. Ford, ed., *Letters of Henry Adams (1858-1891)*, 62 (Boston, 1930); Detroit *Daily Tribune*, August 25, 1851.

<sup>71</sup> Fitch to Mrs. Fitch, June 20, 29, August 1, 12, 1851.

<sup>72</sup> Detroit *Daily Tribune*, August 25, 1851.

<sup>73</sup> Jackson *American Citizen*, August 27, September 3, 1851.

<sup>74</sup> Joy to Brooks, August 26, 1851, in Letters Received Superintendent's Office, August, 1851, volume 40.

<sup>75</sup> Matilda Freeland to Andrew J. Freeland, August 25, 1851, transcripts of

original letters, in Michigan Historical Collections; Jackson *American Citizen*, July 16, August 27, September 3, October 1, 1851.

<sup>76</sup> *Michigan Christian Herald*, August 28, 1851; *Detroit Daily Tribune*, August 8, 15, 23, 25, 1851.

<sup>77</sup> *Jackson American Citizen*, September 3, 1851.

<sup>78</sup> *Jackson American Citizen*, September 17, 1851.

<sup>79</sup> *Jackson American Citizen*, September 3, 1851.

<sup>80</sup> *Grass Lake Public Sentiment*, December 1, 12, 1853.

<sup>81</sup> *Detroit Daily Tribune*, August 15, 23, 25, 1851; *Jackson American Citizen*, August 6, September 3, October 15, 1851; *Detroit Daily Advertiser*, July 29, 1851; Gilbert, "The Great Conspiracy," in the *Michigan Historical Collections*, 31:288; E. Lakin Brown, "Autobiographical Notes," in the *Michigan Historical Collections*, 30:491.

<sup>82</sup> *Detroit Daily Free Press*, September 4, November 7, 1851; *Detroit Daily Tribune*, September 16, 1851; J. W. Donovan, *Modern Jury Trials and Advocates*, third revised edition, 116 (New York, 1885). The closing arguments were interrupted for a week, September 18-25, because of a juror's illness. The addresses of Stuart and William A. Howard have not been preserved.

<sup>83</sup> J. N. W., "William H. Seward at the Bar," in the *Albany Law Journal* 35:399 (May 14, 1887); Proctor, "Seward as a Lawyer," in the *Albany Law Journal* 35:285. Parts of Seward's closing address were reprinted in school elocution books.

<sup>84</sup> *Detroit Daily Tribune*, September 25, 26, 1851; *Jackson American Citizen*, October 1, 15, 1851; *Detroit Daily Advertiser*, September 27, 1851; *Niles Republican*, October 4, 1851.

<sup>85</sup> *Detroit Daily Advertiser*, October 11, 1851; *Detroit Daily Free Press*, November 7, 1851; *Jackson American Citizen*, October 1, 15, November 26, 1851.

<sup>86</sup> Joy to Brooks, October 2, 1851 in Letters Received Superintendent's Office, October, 1851, volume 42.

<sup>87</sup> Farmer, *History of Detroit*, 1:900; *Detroit Daily Advertiser*, January 24, 1852, January 24, 1854.

<sup>88</sup> *Grass Lake Public Sentiment*, May 2, 1853.

<sup>89</sup> *Jackson American Citizen*, June 9, October 6, 1852, April 6, 1853; Criminal Docket County Court Jackson County, 1848-1856, 124; William Norris to Reuben N. Rice, October 4, 1852, in Letters Received Superintendent's Office, October, 1852, volume 54; *Grass Lake Public Sentiment*, December 10, 1853; Moses A. McNaughton to Joy, March 22, 25, 1853; Van Dyke to Joy, April 22, 1854, in Joy Manuscripts, transcripts in the Michigan Historical Collections.

<sup>90</sup> Moses A. McNaughton to Joy, March 25, 1853, in Joy Manuscripts, transcripts in the Michigan Historical Collections; *Grass Lake Public Sentiment*, January 1, 15, February 1, March 15, July 1, September 1, 1853; *Jackson American Citizen*, November 30, 1853, August 16, 1854; De Land, 276, 290.

<sup>91</sup> *Marshall Democratic Expounder*, October 10, 1851; *Jackson American Citizen*, October 1, 29, November 5, 12, 26, 1851; *Grass Lake Public Sentiment*, April 1, 1853; George B. Cooper to Brooks, October 1, 1851 in Letters

Received Superintendent's Office, October, 1851, volume 42; Detroit *Daily Free Press*, November 7, 1851; Detroit *Daily Advertiser*, October 9, 10, November 4, 6, 1851; Election Returns, 1849-1857, in County Clerk's Office, Jackson County Building, Jackson.

<sup>92</sup> Jackson *American Citizen*, October 6, 20, November 3, 24, December 29, 1852, March 9, 1853; *Early History of Michigan: Biographies of State Officers . . .*, 360 (Lansing, 1888).

<sup>93</sup> Jackson *American Citizen*, January 26, March 9, 1853; Joy to Unknown, January 8, 1853 in Joy Manuscripts, transcripts in the Michigan Historical Collections; *House Journal 1853*, 83, 136, 165, 185, 273, 322, 342, 375, 376 (Lansing, 1853); *Senate Journal 1853*, 185 (Lansing, 1853); *Michigan Joint Documents 1854*, number 1: 47 (Lansing, 1854).

<sup>94</sup> *Michigan Joint Documents 1854*, number 1: 36, 46; *House Documents 1857*, number 20: 1, 7 (Lansing, 1857). Aaron Mount died in jail.

<sup>95</sup> Wilbur F. Storey to Joy, January 12, 1853, in Joy Manuscripts, transcripts.

<sup>96</sup> Moses A. McNaughton to Joy, February 23, March 15, 1853, in Joy Manuscripts, transcripts.

<sup>97</sup> *Michigan as a Province, Territory and State*, 3:321.

<sup>98</sup> Grass Lake *Public Sentiment*, July 1, 1853; *House Journal 1853*, 367; *Senate Journal 1853*, 303; *Laws of Michigan 1855*, number 82, 138, 139.

<sup>99</sup> Jackson *American Citizen*, September 24, October 8, November 5, 1851, February 25, May 5, 1852, April 6, August 10, 17, September 14, 1853; Marshall *Democratic Expounder*, October 17, 1851; *Portrait and Biographical Album of Jackson County, Michigan*, 732 (Chicago, 1890).

<sup>100</sup> Jackson *American Citizen*, August 24, 1853; Detroit *Daily Free Press*, August 24, 1853; Adrian *Michigan Expositor*, August 23, 1853; Adrian *Daily Watchtower*, August 26, 1853.

<sup>101</sup> Jackson *American Citizen*, August 31, September 14, November 30, December 21, 1853; Adrian *Daily Watchtower*, September 1, 1853; Detroit *Daily Free Press*, December 2, 1853; *Report of a Case . . . in the Circuit Court of the County of Wayne, entitled the Michigan Central Railroad Company versus the Michigan Southern Railroad Company*, (Detroit, 1853).

<sup>102</sup> Detroit *Daily Free Press*, January 13, 15, 17, 1853; Adrian *Michigan Expositor*, November 16, 1852.

<sup>103</sup> Detroit *Daily Free Press*, January 7, 22, 1853.

<sup>104</sup> J. R. Williams to Joy, January 15, 1853; C. C. Jackson to Joy, January 20, 1853, in Joy Manuscripts, transcripts; Detroit *Daily Free Press*, January 24, 25, 26, 28, February 2, 3, 11, March 3, 1853; Detroit *Daily Advertiser*, January 21, 22, 24, 26, 1853; Jackson *American Citizen*, February 9, 1853; *House Journal 1853*, 353; *Senate Journal 1853*, 356.

<sup>105</sup> Jackson *American Citizen*, February 16, 1853, January 4, 1854; Adrian *Michigan Expositor*, February 22, 1853, January 3, 1854; Detroit *Daily Advertiser*, January 4, 1854; Detroit *Daily Free Press*, December 28, 29, 30, 1853, January 11, 1854.

<sup>106</sup> Detroit *Daily Free Press*, January 12, September 15, 1854; *History of Jackson County . . .*, 328, 330; William Livingstone, *History of the Republican Party*, 1:37, 41, 53 (Detroit, 1900); De Land, 178, 180; Jackson *American*

*Citizen*, July 6, 1854; Albert Williams, "The Republican Party—The True History of Its Birth," in the *Michigan Historical Collections*, 28:480 (Lansing, 1900); Adrian *Michigan Expositor*, July 15, 1854.

<sup>107</sup> The author has gone through the files of the Detroit *Free Press* and *Advertiser* for July-November, 1854; Jackson *American Citizen*, October 4, 11, 18, November 1, 1854.

<sup>108</sup> Jackson *American Citizen*, January 3, 10, 17, 31, February 7, 1855; *Senate Journal* 1855, 4, 51, 151; *House Journal* 1855, 291; *Senate Documents* 1855, number 3.

<sup>109</sup> *Laws of Michigan* 1855, number 82.

<sup>110</sup> Michigan Railroad Commission, *Aids, Gifts, Grants and Donations to Railroads, including Outline of Development . . .*, 98-101 (Lansing, 1919); Farmer, 1:899.

<sup>111</sup> Henry Phelps to Darius Clark, December 9, 1851, in Letters Received Superintendent's Office, December, 1851, volume 44; De Land, 160; Jackson *American Citizen*, September 8, 1852, August 17, 1853.

<sup>112</sup> Michigan Historical Commission, *Michigan Biographies*, 1:172; Friend Palmer, *Early Days in Detroit*, 348, 350 (Detroit, 1906); Farmer, 2:1037; A. T. Andrews, *History of Chicago*, 2:468 (Chicago, 1885).

<sup>113</sup> *Life and Adventures of William Filley*, 13; *Michigan Historical Collections*, 4:270 (Lansing, 1883).

<sup>114</sup> James M. Thomas, *Jackson City Directory for 1869-70*, 97 (Jackson, 1869); *History of Jackson County . . .*, 449-50.

<sup>115</sup> *History of Jackson County . . .*, 446-49.

<sup>116</sup> De Land, 153-60.











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THE GREAT RAILROAD CONSPIRACY: EAST LANS



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